



Arbitration CAS 2005/A/955 & 956 Cádiz C.F., SAD & Carlos Javier Acuña Caballero v. Fédération Internationale de Football Association (FIFA) & Asociación Paraguaya de Fútbol, award of 30 December 2005

Panel: Mr François Carrard (Switzerland), President; Mr Massimo Coccia (Italy); Mr José Juan Pintó (Spain)

Football

Transfer of a minor player

Validity of the rules on the protection of minors

Applicability of the exception provided for in Article 19 para. 2 lit. a RSTP

- 1. The FIFA rules limiting the international transfer of players who are less than 18 years old do not violate any mandatory principle of public policy (“*ordre public*”) under Swiss law or any other national or international law, insofar as (i) they pursue a legitimate objective, namely the protection of young players from international transfers which could disrupt their lives, particularly if, as often happens the football career eventually fails or, anyways, is not as successful as expected; and (ii) they are proportionate to the objective sought, as they provide for some reasonable exceptions.**
- 2. On the basis of the clear wording of both Art. 12 para. 1 letter (a) of the 2001 RSTP and Art. 19 para. 2 letter a of the 2005 RSTP, a player cannot benefit from the exception, if it has been concluded that the player’s family has moved to the country of the new club for reasons linked to football.**

Cádiz C.F., S.A.D. (“the Club”) is a football club with its registered office in Cádiz, Spain. It is a member of the Royal Spanish Federation of Football (Real Federación Española de Fútbol, RFEF) which is affiliated with FIFA since 1904.

The football player Carlos Javier Acuña Caballero (“the Player”) is a Paraguayan citizen currently domiciled in Cádiz, Spain.

FIFA is the International Federation of Football (Fédération Internationale de Football Association) with its registered office in Zurich, Switzerland.

The Player Carlos Javier Acuña Caballero was born on 23 June 1988.

The Player grew up and learned to play football in Encarnación, a small city in Paraguay.

Around the age of 15 he left Encarnación and joined the football Club Olimpia de Paraguay (“Olimpia”) located in Paraguay’s capital city, Asunción.

At the end of January 2005, the Player took part in an international Under 20 tournament in Colombia. The Player was successful during the tournament. Mr Alvaro Torres, a FIFA agent, contacted him at his hotel and wanted to know whether the Player would agree to be represented by him and if he was interested in playing in another club, in particular in Europe.

On 14 February 2005 the Player, his mother and his younger brother left Paraguay for Cádiz, Spain.

The Club and the Player, represented by his mother, signed on 17 February 2005, when the Player was sixteen years and eight months old, a contract of employment for a period of six and half years.

The Club and Olimpia signed on the same day a transfer agreement. According to the terms of this agreement, Olimpia agreed on the transfer of the Player and required from the Paraguayan Football Federation the issue of an International Transfer Certificate (ITC).

On 20 February 2005, one week after the Player and the Player’s mother signed the contract of employment with the Club, the Player’s mother signed a contract of employment with a restaurant. As provided under the clause “*clausulas adicionales*”, such contract was subject to the condition that the Player’s mother be granted all necessary authorisations in order to work in Spain.

On 21 June 2005, the Spanish Federation requested the Paraguayan Football Association to issue the Player’s ITC in order to register him with the Club.

On 22 June 2005 the Paraguayan Football Association refused to issue the ITC due to the Player’s age.

Upon the Club’s request, the Spanish Federation addressed a formal request to FIFA on 12 July 2005 and transmitted a statement from the Club dated 11 July 2005. In this statement the Club alleged in essence that the Player’s mother was in a very difficult financial situation and thus intended to move to Spain. In that context, the continuation of the Player’s football activity was a big problem (“*El gran problema era la continuidad de la práctica deportiva de su hijo*”) and, with the agreement of the Player’s father, she started to look for a club where the Player could continue with its football activity (“*inició (...) la búsqueda de un club donde el joven pudiera continuar su práctica del fútbol*”). The Club appeared to be the best choice among all the available solutions due to the atmosphere and the population of Cádiz (“*de todas la posibilidades (...) fue la del Cádiz CF SAD la que mayor se adecuó (...) por el ambiente y calidez de la gente de esta ciudad*”). The Club explains then in its statement that the Player’s mother and her partner finally chose the Club as the city of Cádiz appeared to be favourable to their job’s search due to their education in gastronomy and the importance of tourism in Cádiz (“*para el tipo de cualificación laboral de la madre y su actual compañero (gastronomía), la ciudad de Cádiz, por ser una ciudad turística, se presentaba como favorable para la obtencion de un empleo*”).

On 27 July 2005, the management of FIFA informed the two associations involved that the ITC could not be issued as the conditions of Art. 12 of the Regulations for the Status and Transfer of Players (2001 Version) and of Art. 19 of the Regulations for the Status and Transfer of Players (2005 Version) had not been met.

On 1 August 2005, the Club sent a copy of a residency authorisation and a work permit in favour of the Player's mother and requested a formal decision from FIFA.

On 4 August 2005, the Club submitted to FIFA a new contract of employment dated 2 August 2005 between the Player's mother and the restaurant. According to this contract, the Player's mother could start working on the same day. No salary was fixed in the contract.

A few days later, the Club submitted to FIFA an additional document issued by the Police of Cádiz, dated 5 August 2005, which confirmed that the Player's mother, the Player, his brother as well as his mother's partner lived together in an apartment in Cádiz.

Based on the documents handed over to FIFA, the Single Judge of the FIFA Players' Status Committee issued his decision on 26 August 2005, stating the following, in relevant parts:

- *[...] The Single Judge took due notice of the age of the player, i.e. 17 years old. To this respect, the Single Judge highlighted that, pursuant to Article 19 of these Regulations [i.e. The 2005 version of the Regulations for the Status and Transfer of Players], international transfers of players are only permitted when the player reaches the age of 18. However these Regulations provide for three exceptions. In virtue thereof, the Single Judge expressed that obviously the exceptions stipulated in Art. 19 par.2 letter b) and letter c) of the Regulations do not apply to this case. However the Single Judge considered necessary to check a possible authorization for the player to be transferred according to Art. 19 par.2 letter a) of the Regulations.*
- *By virtue of the above, the Single Judge started by examining the content of the employment contract formalized between the Cádiz C.F., S.A.D. club and the Player Acuña [...]. To this respect, the Single Judge stressed in particular that the documentation submitted was not proof that the player would work in Spain in any other activity than football. In effect, there was no mention anywhere of the player's intention to continue his school or academic education.*
- *[...] The contract [between the Player's mother and the restaurant] stipulated that it would take force on the date the player's mother obtained her residence authorization and her work permit. Besides the contract did not provide for salary. [...]*
- *Referring to Art. 19 para. 2 letter a) of the Regulations, the Single Judge emphasised that a valid reason to allow for an exception to the principle laid down in Article 19 para. 2 letter a) was that the parents of the player changed their domicile to the country where the new club [was located] for reasons not linked to football and the player had limited to follow her for those reasons which are not linked to football. In this state of things, the Single Judge concluded that the situation is just the opposite, i.e., the mother would have followed the player after the Spanish club had expressed their special interest in the player.*
- *The Single Judge highlighted that the protection of minors is one of the fundamental principles of the Regulations and, thus, watching its observance is essential to protect his best interest in so far as he is a "minor". Only by applying the appropriate provisions consequently and systematically will positive effects continue to be generated,*

thus avoiding an affection of the rights of minors. As a consequence of the arguments put forward, the Single Judge concluded that a strict application of Art. 19 para 2 letter a) of the Regulations was the most pertinent in order to avoid possible attempts of elusions.

- *Based on the afore-said, the Single Judge decided (having applied the above mentioned Regulations strictly) to refuse the request of the Royal Spanish Football Federation of registering the player Carlos Javier Acuña with their affiliate club, Cádiz C.F., S.A.D”.*

For the above-mentioned reasons, the Single Judge of the FIFA Players’ Status Committee decided the following:

- “1. Refuse the request of the Royal Spanish Football Association.
2. Pursuant to the provisions of Art. 60 section 1 of the FIFA Statutes, this decision can be appealed against before the Court of Arbitration for Sport (CAS). The appeal must be filed within 10 days further to the receipt of the notification of the decision, pursuant to point 2 of the procedural rules published by the CAS, a copy of which is herein enclosed. [...]”.

The decision issued by the Single Judge of the FIFA Players’ Status Committee (the “Decision”) was notified on 31 August 2005 to the Club and on 1 September 2005 to the Player.

On 8 September 2005, the Club filed a statement of appeal with the CAS. It challenged the Decision, submitting the following request for relief:

*FIRST.- To previously consider the **request of provisional granting of the International Transfer Certificate of the player Mr. Carlos Javier Acuna Caballero**, in order for the object of this appeal to take the appropriate effects, which is the issuing of the International Transfer Certificate of the said player, consequently being able to register him as a player of the appelland party for this championship, and given that the provisional granting of our request does not affect third parties in disagreement, we request that our request be granted as a provisional measure, bearing in mind that such granting will guarantee the effectiveness of the future decision which this Court shall adopt and to protect the rights to which Mr. Acuna Caballero is entitled to as a person and as a worker in the regulations invoked in this appeal and to avoid the prejudice which is being caused to him at this moment, which would be difficult to rectify if our request was not accepted.*

*SECOND.- That not having taken into account the specific circumstances of this case, which have been put forward herein, it is not appropriate to apply the above-mentioned Article 19 of the Regulations for the Status and Transfer of Players in force, because its application would entail a clear contravention of the equality and non-discrimination principle because of sex, nationality, race and because it implies likewise an **infringement of the individual right of the player in so far as he is self-employed, as he is a professional sportsman, and the said regulation violates his right to develop his professional activity.***

*THIRD.- That the refusal decision of the Paraguayan Football Association to grant the International Transfer Certificate contravenes the regulations in force at the time when the request was made, for as mentioned earlier, there was no risk of exploitation for the minor, as required by the afore-mentioned Circular letter number 801 of the FIFA. This error is also incurred in by the Players’ Status Committee and the Single Judge of the FIFA on the decision which is the object of this appeal. Thus it is appropriate for the said Court to **declare null and void the decision appealed against, as the Rules for the Transfer of Player of July 2005 are unduly applied, when their decision should have been governed by the Rules***

of 2001 and Circular letter number 801 which amends it. By applying these Rules and the Circular letter we request the Court to grant the International Transfer Certificate of the player to enable my client to register him in the Royal Spanish Football Federation. Likewise for the grounds explained above, we request the Court to decide that, although once their decision has been made and the dispute has been settled the registration period will have finished, the player Mr. Carlos Javier Acuna Caballero will be allowed to be registered in the Royal Spanish Football Federation as a member and player of the team my client owns, thus enabling Mr. Acuna Caballero to take part in the different official competitions which CÁDIZ C.F. will be playing in the next season.

*FOURTH.- That, **subsidiarily**, if the previous grounds for appeal are dismissed and **after having proved the veracity of the work relation between the player's mother and the company**, which existed prior to the work relation entered into between the player and the club, which is in force to this date, and having distorted the alleged lack of financial content in the contract signed between the player's mother and the company, **having consequently proved that the relation between the minor and my client is a consequence of the change of residence of the player's mother**, due to employment reasons, the provisions of Art. 19 of the Regulations for the Status and Transfer of Players in its 2005 version are applicable and in force to this case. Thus, we request **this Court of Arbitration to accordingly grant the International Transfer Certificate of Mr. Javier Acuna Caballero**, in order to register him as a player of the CÁDIZ, C.F., S.A.D, in the Royal Spanish Football Federation, reiterating that, likewise, we request the Court to decide that, although once their decision has been made and the dispute has been settled the registration period may have finished, the player Mr. Carlos Javier Acuna Caballero will be allowed to be registered as a member and player of the CÁDIZ C.F., SAD team, thus enabling Mr. Acuna Caballero to take part in the different official competitions which the said will be playing this season.*

On 8 September 2005, the Player filed a statement of appeal with the CAS. It challenged the Decision, submitting the following request for relief:

1.- To render void and invalidate Article 19 of the Regulations for the Status and Transfer of Players in force, as this Article directly infringes the individual rights of the player in so far as he is a worker, contravening the basic rules of freedom to work by limiting his ability to access the labour market.

Likewise, the decision contravenes the free right to develop his personality and represents an infringement of the possibility of a normal development of his personality, a right which is clearly protected in the Swiss Civil Code, which must be observed by the FIFA as it is an organization governed by Swiss Law.

2.- The invalidation of Article 19.2 of the Rules for the Status and Transfer of Players and, precisely, the invalidation of the geographical limit laid down for transfers inside the European Union or the European Economic Area, in order to allow only in those cases for players between 16 and 18 years old to be hired, as such limitation utterly discriminates the rest of the players outside the said territories, which contravenes the fundamental principle of equality before the law.

3.- Consequently, the reversal of the decision made by the Players' Status Committee, which is the object of this appeal, and for the Court to pass a ruling which admits that the player can register with the CÁDIZ C.F., S.A.D. in the Royal Spanish Football Federation, having previously been granted the International Transfer Certificate, as the player meets the legal employment requirements laid down by the national legislation of the origin and destination countries as well as the Swiss employment legislation.

4.- *To grant CÁDIZ C.F., S.A.D. an extension on the registration period of the player with the REFE and this club to enable the player to register in December this year and play in the 2005/2006 season.*

The Club's and the Player's ("the Appellants") submissions, in essence, may be summarized as follows:

- The Appellants first consider that if any Regulations for the Status and Transfer of Players were applicable to the case, it would be the version of 2001 (hereinafter "the Players' Regulations 2001").
- On the substance, the Appellants' main point is that the Player's mother had decided to move from Paraguay before knowing about the possibility for the Player to play abroad. She had applied for a job in Cádiz as one of her friends in San Roque, a small town not far from Cádiz, recommended her to search for a job in that city. When an agent showed interest in the Player, the Player's agent in Paraguay, the Player and the Player's mother asked specifically that they look for a club in the region of Cádiz.
- On page 13 of the English version of the Club's statement of Appeal, the Club mentions in particular: *"Having already determined that his [i.e. the Player] work destination would be Spain and in possession of Carlos Javier's father authorisation, who does not live with them (see Annex 8), the search of a new club where the young player could continue playing football in conditions favourable to his training and education started. From all the possibilities, the offer made by CÁDIZ C.F. S.A.D. was the most suited to his parents' wishes, due to the warmth and atmosphere of Gaditan people.*
Moreover, the tourist city of Cádiz was favourable for his mother and his current partner to find employment bearing in mind their qualifications (gastronomy), which was the main reason why the family moved to Spain".
- Based on the foregoing, the Appellants confirmed the version explained to FIFA and repeated that the Player had followed his mother and not the opposite.
- In addition, the Appellants stressed that the Player's personal situation in Asuncion was very difficult as – his parents being divorced – he was far away from his mother living in Encarnación and, therefore, left alone in a small studio apartment at his agent's house. The move to Spain had been very positive for the Player and his family. According to the Appellants, the FIFA decision lead to the paradoxical result that with the objective of protecting young players, FIFA was about to destroy a family and the career of the Player.
- Furthermore, the Appellants contested at length the validity of the FIFA regulations considering them as contrary to Spanish, Swiss and international employment and human rights legislations.

On 24 November 2005, FIFA submitted the following answer to CAS:

- 1.- *To reject the appellants' request for Spanish as language of the present proceedings in front of CAS.*
- 2.- *To reject the appellants' request for stay of execution of the challenged decision and for provisional registration of the player.*
- 3.- *To reject the appellants' appeal against the decision passed by the Single Judge of the Players' Status Committee on 26 August 2005, and to confirm the challenged decision.*
- 4.- *To order the appellants to bear all the costs of the present procedure, as well as all legal costs by the Respondent FIFA in the present procedure".*

FIFA's submission, in essence, may be summarised as follows: The facts submitted to the Single Judge prove clearly that the move of the Player's family to Spain was linked to football. Therefore the exception provided under article 19.2 a) of the version 2005 of the Regulations (hereinafter the "Players' Regulations 2005"), which FIFA considers as applicable as the case has been brought before FIFA on 12 July 2005, is not applicable to the present case.

A hearing was held on 17 December 2005 in Lausanne.

- The Player attended and was represented by Mr Francisco Javier Garcia Marechal, attorney-at-law.
- The Club was represented by its attorneys-at-law, Mr Juan de Dios Crespo Perez and Mr Martin Jose Garcia Sanchez.
- The Appellants were assisted by Mrs Emilia Surico, who acted as interpreter.
- FIFA was represented by Mr Vitus Derungs and Ms Melanie Velasco, internal lawyers.

During the hearing, the Parties made full oral submissions, confirming their written submissions. Both parties confirmed that they accepted that the cases be joined. FIFA confirmed that although, in its opinion, the Players' Regulations 2005 would be applicable there was in practice no difference between the Players' Regulations 2001 and the Players' Regulations 2005 with regard to the rules on protection of minors, and that the jurisprudence developed under the Players' Regulations 2001 as well as the FIFA Circular Letters issued before 1 July 2005 on article 12 of the Players' Regulations 2005 were still applicable. In that context, invited to do so by the Chairman of the Panel, FIFA brought clarifications regarding its Circular Letter no. 995 on Art. 26 para. 2 of the Players' Regulations 2005, which is related to the transitional measures.

The Player was asked several questions by the Parties' representatives and the Panel. He confirmed the version of the facts presented in front of FIFA and added some further information. In particular, his personal situation in Asuncion was apparently not easy. He claimed to have nobody who would really take care of him, Olimpia did not provide for any support regarding education or other activities. His financial needs were met through financial support from his agent or little jobs in Asuncion. He explained that between December 2004 and January 2005, his mother had told him that she wanted to move to Spain and that he was very affected by the news as he understood that it would be even more difficult to keep in contact with her.

The Player explained that when Mr Alvaro Torres contacted him during the tournament in Colombia, he directly gave him his mother's telephone number in order for them to discuss how he could move to a European club.

The following persons were called to testify:

- Mrs Blanca Beatriz Caballero Cáceres, the Player's mother
- Manuel Perez, the employer of the Player's mother

- Alvaro Torres, FIFA agent
- Alberto Benito, the Club's manager
- Carlos Guillen, Psychologist

The testimony of each witness may be summarised as follows.

Mrs Blanca Beatriz Caballero Cáceres, the Player's mother

The Player's mother confirmed the facts as stated by the Club before FIFA. She explained that at the end of 2004, she was living in Encarnación, Paraguay with her youngest son, who was around one and a half year old at that time. She was divorced and unemployed after 10 years spent as a cook in different local colleges. She was separated from her older son, the Player, who was living on his own in Asuncion. She had some contact with him by telephone and they were able to see each other only two or three times per year. She told the Panel that she was looking for jobs in Cádiz after having discussed it with one of her friends who was living in San Roque, close to Cádiz.

The Player's mother claimed that she had sent e-mails to various restaurants in Cádiz with the help of a friend in Encarnación who had a computer. A CV was attached to the email. She said that she received only one reply from a Mr Manuel Perez, the owner of the restaurant she is currently working for. According to the Player's mother, Mr Perez sent an offer in the beginning of February.

At the same time she got a phone call from Mr Alvaro Torres, a FIFA agent, who was interested in the Player. She provided him with the telephone number of the Player's agent in Asuncion, Mr Alfredo Mendoza. She claimed to have asked Mr Mendoza to do the maximum in order to find a club close to Cádiz because she was about to get a job there.

According to the Player's mother, several days passed before the Player got offers from clubs. In the meantime she had received the offer from the restaurant. Prior to that, she had discussed it verbally with the owner of the restaurant by telephone at which point he had indicated to her the terms and conditions of employment, including the salary she would get.

The Panel asked the Player's mother why she did not choose San Roque, where her friend was living, instead of Cádiz. The Player's mother answered that her friend had told her that Cádiz was bigger and that it would thus be easier to find a job there.

When the Panel asked her whether she intended to move to Spain if her son had not found a job there, the Player's mother replied that she would have moved alone, leaving her youngest son with her parents and in order to first settle there and then let her children come to join her afterwards. The Panel asked her if she was sure that she would be hired by the restaurant when she first left Cádiz with the Player. The Player's mother explained that at that moment she had called the restaurant in order to finalise the agreement.

She also said that the Club did not pay for her first flight ticket to Spain. The representatives of the Club picked them up at the airport and she went on her own to the restaurant where she was supposed to work.

She confirmed that her monthly salary was up to around EUR 1,500 for the good months. Between 50 and 100 Euros per month were deducted from it in order to reimburse a down payment made by her employer in order to finance the other flights to be made between Paraguay and Spain in order to finalise the permit procedure.

The Player's mother insisted on the fact that her son's dream was to play football in Europe, notably in Germany, and that she was very surprised and moved to see that her son accepted to play for the Club in order to live with her.

Mr Manuel Perez, manager of the restaurant:

The Panel then heard Mr Manuel Perez, the manager of the restaurant where the Player's mother is working. Mr Manuel Perez confirmed that the Player's mother has been working in his restaurant since August 2005 when she got her work permit. According to the witness, the Player's mother had sent him in January 2005 a simple email, without attachment, indicating that she was interested in working in his restaurant. He explained to the Panel that he then replied to her that there was a place as a cook for her from August 2005 which is the high season in Cádiz. The witness then said that the Player's mother replied to him confirming her interest in working in Cádiz and the witness claimed that he then had had a telephone call with her during which he indicated the terms and conditions of employment of the Player's mother. Mr Perez and the Player's mother met in February and finalised the contract of employment at that moment. According to the witness, it was planned that the Player's mother would start her job in August due to the time require to obtain the work permit. The witness told the Panel that he had no relationship with the Club.

Mr Alvaro Torres, FIFA Agent

The third witness confirmed that he had had contacts with the Player during the tournament which took place in Colombia at the end of January. He maintained that he had had at that moment no specific contacts with Cádiz and was only interested in the Player with the purpose of contacting various clubs which might be ready to hire him.

He claimed that he had been instructed by the Player's agent and the Player's mother to find clubs in Spain. He explained that he had thus contacted Sevilla, Betis, Malaga, Real Madrid and Cádiz. The witness stated that Real Madrid had made a very good offer but that the Player chose Cádiz because her mother was working there.

When FIFA asked him during the hearing why he signed a representation contract with the Player knowing that he was less than 18 years old, Mr Torres answered that he was interested in representing

him also in South America and that it was only later that Spain had been mentioned as a possible place of transfer.

Mr Alberto Benito, the Club's Manager:

Mr Alberto Benito, the fourth witness, confirmed the version of the Player and of his mother. He claimed that there were other offers from other clubs and that the Player chose the Club because his mother was working there. He maintained that he had had the first contact with the Player's agent between the end of January and the beginning of February. Mr Benito welcomed the Player and the Player's mother at the airport and the Club made all necessary arrangements during their stay in Cádiz.

Mr Benito confirmed that the Club was providing support to the Player for his education. Apparently the Player was suffering a lot due to the situation and had had to follow a treatment with a psychologist. The witness explained that the level of the player was good enough for playing immediately in the Spanish League and even for playing with the Paraguayan national team at the next World Cup.

When FIFA asked him if he knew the age of the Player and if he was aware of the rules on the transfer of young players, Mr Benito stated that he knew that the Player was under 18 but maintained that he had been told right from the beginning that the Player's mother was moving to Spain.

FIFA then asked about the statements on the Club's website regarding the circumstances of the Player's transfer, in particular regarding the fact that the Club had apparently followed the Player for a long time. Mr Benito maintained that friends of his had noticed the Player and not the Club's representatives. Mr Benito repeated that he considered that the Club had respected the FIFA rules as they had been told from the beginning that the Player's mother had work in Cádiz.

Mr Carlos Guillen, Psychologist:

The last witness, Mr Carlos Guillen, was then heard on the personal situation of the Player. In brief, the psychologist confirmed that the Player was suffering a lot from the situation. He was depressed, had lost confidence and was easily irritated. No medication had been decided at the moment as, according to the psychologist, the best treatment for the Player is to be allowed to play again. When asked by the Panel, the witness confirmed that the situation of the Player could be compared to that of a player who suffers from a bad injury and is thus prevented to play for a long period.

Several documents have been brought by the Appellant before FIFA and before CAS. Some of them appear to be contradictory and others have been filed by the Appellants in reaction to FIFA's preliminary statements. FIFA expressed doubts on the truthfulness of some documents or statements. In that context, the Panel considered, with caution, the documentation provided. In particular, the Panel only considered a document to be credible when it had been specifically approved by all the parties or when other hard evidence corroborated the information contained in the document, in

particular its date, which, in this particular case, is important for the decision. In addition, no copies of any of the emails alleged by the witnesses and by the Appellants have been produced either to FIFA or to CAS. Neither have any copies of any alleged offers by any other clubs been produced. With regard to the date of the signature of the employment contract by the Player's mother, the oldest official document – bearing the stamp of the Spanish authorities fully proving the date – has a later date than the date of the signature of the agreement between the Player and the Club.

Based on the foregoing, the offer dated 25 January 2005 will in particular not be taken into consideration, as the Panel deems that the Appellants did not prove that it had ever been sent and received and, even less, that it was truly received at the end of January.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from art. 59 ff. of the FIFA Statutes 2004 and art. R47 of the Code of Sport-related arbitration (hereinafter the “Code”). It is further confirmed by the order of procedure duly signed by the Parties.
2. Consequently, CAS has jurisdiction to decide the present dispute.
3. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts, including new facts, which had not been mentioned by the Parties before the Single Judge of the FIFA Players' Status Committee, and all legal issues involved in the dispute.

Applicable law

4. Art. R58 of the Code provides the following:
The Panel shall 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.
5. Art. 59 par. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs, and, additionally, Swiss law.

6. In the present matter, the Parties have agreed during the hearing on the application of the rules and regulations of FIFA, primarily, and Swiss law, subsidiarily. Therefore, the Panel confirms that the rules and regulations of FIFA shall apply primarily and Swiss law shall apply subsidiarily.

Admissibility

8. The appeals were filed within the deadline provided by art. 60 of the FIFA Statutes and indicated in the Decision, i.e. within 10 days after notification of such decision.
9. It follows that the appeals are admissible, which is also undisputed.

Main Issues

A. Applicable Regulations

10. The events in question occurred between December 2004 and August 2005. The Player's contract at stake has been signed on 17 February 2005 and the case has been brought to FIFA on 12 July 2005. According to article 26 of the Players' Regulations 2005 and the Circular Letter no. 995 of the FIFA dated 23 September 2005, the Players' Regulations 2005 are applicable. The Panel notes, however, that FIFA itself confirmed that the jurisprudence and the FIFA Circular Letters, namely the Circular Letter no. 801, based on the Players' Regulations 2001 remained applicable as far as Art. 19 of the Players' Regulations 2005 is concerned. The Panel notes, and FIFA confirmed it, that this article does not substantially differ from article 12 of the Players' Regulations 2001 which dealt with the same subject. The Panel will therefore apply article 19 of the Players' Regulations 2005 on the basis of such jurisprudence and of the related Circular Letters of FIFA.

B. The validity of the FIFA rules on the protection of minors

11. The Appellants argued that the FIFA rules regarding the protection of minors are void, as they are private rules of an association in conflict with mandatory provisions of public policy, which cannot be limited by private parties. For this purpose, the Appellants invoke the applicability of several provisions of public international law, of Swiss law and of Spanish law. FIFA obviously objects to such construction.
12. The Panel, having examined carefully the contested FIFA rules limiting the international transfer of players who are less than 18 years old, has come to the conclusion that those FIFA rules do not violate any mandatory principle of public policy ("*ordre public*") under Swiss law or any other national or international law, insofar as:

- i) they pursue a legitimate objective, namely the protection of young players from international transfers which could disrupt their lives, particularly if, as often happens the football career eventually fails or, anyways, is not as successful as expected;
- ii) they are proportionate to the objective sought, as they provide for some reasonable exceptions.

13. Accordingly, the Panel considers that the FIFA rules on the protection of minors are valid.

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

- Was the move of the mother related to the transfer of her son to Cádiz?
- Is the exception of article 19 paragraph 2 letter a) applicable?

14. Was the move of the mother related to the transfer of her son to Cádiz? After having closely reviewed all the documents at hand and after having carefully listened to the witnesses, the Panel came to the conclusion that the Player's decision to move to Spain was made first and that the Player's mother decision to move to Spain was thus directly linked to the contract signed between the Player and the Club.

15. The Panel stresses that the witness statements were inconsistent with each other on several points and were inconsistent with previous documents or written statements filed before FIFA. The Panel is of the opinion that the Appellants' version of the facts, as developed by the Club and the Player before FIFA and CAS, has been evolving on the basis of the requests for evidence made by FIFA during its own procedure.

16. The circumstances of the Player's mother's job search are not clear and the Appellants' version is not convincing. In that context, the Panel noted contradictions on the very details provided by the Player's mother and the manager of the restaurant, with regard to the employment application. In one version, the mother's CV was attached to her e-mail to the potential employer while in another one, it was not. By trying to strengthen their version of the story, the Appellants also brought about inconsistencies. Before the Panel, the mother contended that it was important to her to work in Cádiz, many cities in Spain meeting the alleged expectations of the Player and the Player's mother, such as a good football club and tourism infrastructure. She explained that she had contacts with a friend in San Roque and that she had applied for positions in Cádiz before any contact had been made with the Club. Before FIFA the Appellants explained that the family had decided to move to Spain and that they were looking for the right place to live, bearing in mind the need for the Player to find a good club.

17. The Player's mother explained that she expressly asked the Player's agents to find a club in or close to Cádiz. The documents produced by the parties show that the Player's mother had not yet concluded any final employment agreement when the Player and the Club signed the contract. The Panel does not understand, therefore, why the Player, as he alleges, would have

disregarded offers from other clubs while it was not sure for the mother that she would get a job in Cádiz.

18. The Panel is in fact of the opinion that the Player's mother could have worked anywhere in Spain and that the Player did not need to refuse other offers.
19. By insisting on Cádiz, as the only suitable place, the Appellants confirmed the Panel's opinion that the Player first found a club and that the Player's mother then started to look for a job when she was in Cádiz, accompanying her son. The statement of the Club in its written submission appears to confirm that it was the Club's offer made to the Player that determined the place where his mother would search for a job in Spain: *"From all the possibilities, the offer made by CÁDIS C.F. S.A.D. was the most suited to his parents' wishes, due to the warmth and atmosphere of Gaditan people.*

Moreover, the tourist city of Cádiz was favourable for his mother and his current partner to find employment bearing in mind their qualifications (gastronomy), which was the main reason why the family moved to Spain".
20. Based on the foregoing, taking into account the various discrepancies between the statements of the witnesses as well as the lack of documented evidence as to the exact chronology of the steps taken by the Player's mother, the Panel considers that the Appellants failed to prove that the Player's mother was specifically looking for a job in Cádiz before her son was contacted by the Club.
21. Is the exception of Art. 19 para. 2 letter a) Players' Regulations 2005 applicable? On the basis of the clear wording of both Art. 12 para. 1 letter (a) of the Players' Regulations 2001 and Art. 19 para. 2 letter a of the Players' Regulation 2005, the Panel is of the view that the Appellants cannot benefit from the exception, given that the Panel has concluded that the Player's family has moved to Spain for reasons linked to football.
22. According to its Circular Letter no. 801, dated 28 March 2002, FIFA insists on the strict application of the rules on the protection of minors.
23. The Appellants claim that the strict application of the rule would lead to serious consequences for the Player and that the purpose of the protection of the minors would thus not be reached. The Panel stresses, first, that the task of the CAS is not to revise the content of the applicable rules but only to apply them. Second, it must be ascribed to the Appellants, especially the Club, the responsibility for not having taken into consideration the clear rules, however strict, set by FIFA with regard to the protection of minors, which rules were also applied by the Paraguayan Football Association by denying the issuance of the ITC. It seems to the Panel that the Club was too light in organising the Player's move to Spain without applying in advance for the exception provided by both Players' Regulations 2001 and 2005. Should there be any adverse consequences on the Player deriving from the refusal to allow the immediate registration of the Player for the Club, it is the attitude of the Appellants and not the content and the implementation of the rule that should be blamed. In any event, it is doubtful that the Player will have to face such adverse serious consequences for long; he will be prevented to play for

the Club for only half a season, as he will turn 18 in less than six months from now, in June 2006.

24. Therefore, based on the facts presented by the parties, the Panel considers that the Single Judge of FIFA correctly applied the FIFA rules and concurs with him that there are no valid reasons to grant any exception to the Player and to the Club. It follows that the appeal shall be dismissed.

The Court of Arbitration for Sport rules:

1. The Appeals filed by Cádiz C.F., S.A.D. and Carlos Javier Acuña Caballero are dismissed.

(...).