

CAS 2016/A/4785 Real Madrid Club de Fútbol v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Michele A.R. **Bernasconi**, Attorney-at-law, Zurich, Switzerland

Ad hoc Clerk: Mr Francisco A. **Larios**, Attorney-at-law, Miami, Florida, USA

between

Real Madrid Club de Fútbol, Madrid, Spain

Represented by Mr Lucas Ferrer and Mr Jordi López, Attorneys-at-law, Barcelona, Spain

-Appellant-

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Marco Villiger, Chief Legal and Integrity Officer and Mr Marc Cavaliero,
Head of Disciplinary

-Respondent-

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I. INTRODUCTION

1. Real Madrid Club de Fútbol brings an appeal against FIFA, challenging the decision of the FIFA Appeal Committee rendered on 8 April 2016 and notified on 8 September 2016, which confirmed the FIFA Disciplinary Committee's decision communicated on 14 January 2016 to impose on the Spanish club (i) a registration ban of two complete and consecutive transfer windows, (ii) a fine of CHF 360,000, and (iii) a reprimand, for the club's violations of Articles 19, 9.1, 5.1, 19bis.1 and Annexes 2 and 3 of the FIFA Regulations on the Status and Transfer of Players (hereinafter the "RSTP").

II. THE PARTIES

2. Appellant, *Real Madrid Club de Fútbol* ("Real Madrid" or "Appellant"), is a professional Spanish football club based in Madrid, Spain. The club plays in the Spanish 1st Division ("*La Liga*") and is affiliated to the *Federación Futbol de Madrid* (hereinafter the "FFM") and the *Real Federación Española de Fútbol* ("RFEF").
3. Respondent, the *Fédération Internationale de Football Association* ("FIFA" or "Respondent"), is the international governing body of football at worldwide level, headquartered in Zurich, Switzerland.

III. FACTUAL BACKGROUND

4. This section of the Award sets out a brief summary of the main relevant facts, as established on the basis of the Parties' written submissions, the CAS and FIFA files, and the content of the hearing that took place on 14 December 2016. Additional facts are set out, where material, in other parts of this Award.
5. In October 2013, the Department of Integrity and Compliance of Transfer Matching System GmbH (the body in charge of overseeing compliance with the Transfer Matching System, hereinafter referred to as "FIFA TMS") was made aware of Real Madrid's potential breach of the RSTP with regard to the transfer of three players who were minors (*i.e.* under 18 years old). These Players have been referred to during the FIFA proceedings as "Players 22, 23 and 25"¹. From this ensued an exchange of communications from 20 January 2014 to 24 April 2014 between FIFA TMS and Real Madrid concerning several minors (including the three aforementioned), where FIFA TMS requested information and Real Madrid provided it.
6. In light of the rumors and news about FIFA's investigations against the RFEF and the *Fútbol Club Barcelona* ("FCB") over the international transfer and first registration of minors under the age of 12 years ("U-12"), Real Madrid wished to confirm that it had been correctly registering U-12 Players. To that end, it sought confirmation from the RFEF that U-12 players did not need approval from the

¹ Unless necessary, and in view of their age, in the present Award the Sole Arbitrator will identify the Players using the same number assigned in the FIFA proceedings.

subcommittee of the FIFA Players' Status Committee (the "FIFA Subcommittee"). In response, on 10 March 2014, the RFEF informed Real Madrid:

“Efectivamente, los menores de 12 años no necesitan la aprobación de la Subcomisión de menores de FIFA, con lo que son las propias federaciones de ámbito autonómico las que inscriben a los referidos futbolistas sin más trámite.

Los que fueron inscritos antes de la circular a la que haces referencia tienen el mismo tratamiento. Menores de 12 años inscritos sea cuando fuere, no han de pasar por la Subcomisión de menores de FIFA, y se “convalida” automáticamente dicha inscripción cuando superan los 12 años y ya estaban inscritos desde antes de dicha edad.”

Unofficial translation into English²:

“Indeed, children under 12 years of age do not need the approval of the FIFA Subcommittee for minors, which means that it is the autonomous federations themselves that register those players without further action.

Those who were registered before the circular to which you make reference shall be treated the same. Minors under the age of 12 do not have to go through the FIFA Subcommittee for minors, and their registration is automatically "validated" when they turn 12 years old if they were already registered before that age.”

7. In view of the RFEF's confirmation, Real Madrid went on to register another U-12 minor in 24 September 2014, Player 24, following the same method as before – registration with the FFM and no additional approval request from the RFEF or the FIFA Subcommittee.
8. On 10 April 2014, the RFEF sought clarification from FIFA about Article 19 RSTP. In reply, on 17 April 2014, FIFA informed the RFEF that:

“[...] la Subcomisión del Estatuto de Jugador, en su reunión de octubre de 2009, aclaro que no era necesario presentar una solicitud de aprobación conforme el art 19, apdo. 4 del Reglamento previo a una petición de una asociación de un CTI y/o primera inscripción de jugadores menores de 12 años. (...) Sin embargo, (...) cada asociación que tiene la intención de inscribir a jugadores menores de 12 años para uno de sus clubes afiliados lleva aún más la responsabilidad de asegurar que el bienestar de los niños en cuestión no esté en riesgo y que estos estén debidamente atendidos, en línea con el espíritu y los principios de las disposiciones del Reglamento relativos a la protección de los menores. No hace falta decir que las asociaciones también deberán contribuir en evitar que los objetivos pertinentes estén siendo socavados.”

Unofficial translation into English:

“(...) The Subcommittee of the Players' Status in its meeting of October 2009, clarified that there was no need to seek approval under Article 19.4 of the FIFA RSTP before requesting an ITC and/or effecting a first registration of a player aged below 12 years (...). However, any association intending to register minors aged below 12 years for one of its affiliate clubs carries a

² The translations contained in the present Award were made by the Sole Arbitrator and the *ad hoc* Clerk and are only for guidance and of an informal nature.

greater responsibility of ensuring that the well-being of the children in question is not under threat and that they are treated in line with the spirit and principles of the relevant regulations on the protection of minors. It is needless to say that the associations must also take part in avoiding that the relevant objectives [of said regulations] are undermined.”

9. On 11 November 2014, the Secretariat of the FIFA Disciplinary Committee notified Real Madrid, through the RFEF, that it had launched a preliminary investigation in order to assess whether it had committed violations of the rules on international transfer and/or first registration in connection with several minors. The FIFA Disciplinary Committee also requested additional information on those minors, as well as information on Real Madrid. The FIFA Disciplinary Committee invited Real Madrid to confirm whether any other minors were registered with Real Madrid through international transfer or first registration and to introduce any other information relevant to the investigation. From this ensued another exchange of communications that lasted until March 2015, in which Real Madrid provided FIFA with the information requested and its position on the matter.
10. On 23 January 2015, FIFA issued a circular letter, *i.e.* Circular no. 1468, in which it notified its members *inter alia* of the amendment to the Article 9.4 RSTP that would enter into force in March 2015. The Circular read in the relevant part:

“[...] in order to strengthen the protection of minors and due to the increased number of international transfers of players younger than 12, the FIFA Executive Committee has approved a reduction in the age limit for which an international transfer certificate (ITC) is required to the age of 10.

In this regard, we would like to recall that, while referring to the reasoning behind the contents of art. 9 par. 4 of the Regulations, on the occasion of its meeting of October 2009, the sub-committee appointed by the Players’ Status Committee had clarified that no application for approval according to art. 19 par. 4 of the Regulations was required prior to any request from an association for an ITC and/or first registration of players under the age of 12.

On account of that decision, bearing in mind the considerations made by the FIFA Executive Committee with respect to the factors at stake (i.e. increased number of international transfers of players younger than 12 and the need to reinforce the protection of minors) in respect of art. 9 par. 4, the member associations will be obliged to submit applications for approval of any international transfer of minor player or first registration of a foreign minor player to the sub-committee appointed by the Players’ Status Committee for any player as of the age of 10 (cf. art. 19 par. 4 of the Regulations).

Furthermore, we deem it important to point out and clarify that if a member association intends to register under the age of 10 (currently 12), despite the fact that no ITC and no application to the sub-committee appointed by the Players’ Status Committee will be required, it is all the more responsibility of this association to verify and ensure that the requirements for the protection of minors established in art. 19 par. 2 of the regulations are met.”
11. Following this FIFA Circular no. 1468, the RFEF issued two circular letters, *i.e.* Circular no. 33 on 26 January 2015, and Circular no. 37 on 3 February 2015, respectively, in order to explain to its clubs FIFA’s amendments to the RSTP. With regard to the amendment to Article 9.4 RSTP, the RFEF stated in the Circular specifically the following:

“La aclaración que realiza FIFA sobre los futbolistas menores de 10 años (anteriormente 12 años), viene a modificar el procedimiento para la inscripción de los futbolistas extranjeros que por su edad no necesitan Certificado de Transferencia Internacional, en el sentido de aclarar que, la RFEF como miembro de FIFA, debe asumir la responsabilidad de verificar y garantizar que se cumplen todos los requisitos para la protección de menores, tal como estipula el artículo 19, apdo. 2 del Reglamento Sobre el Estatuto y la Transferencia de Jugadores y el artículo 120 del Reglamento General de la RFEF.

En este sentido y con el objeto de hacer cumplir la normativa de FIFA aclarada en la mencionada Circular n° 1468, la RFEF pone en marcha un sistema telemático de tramitación de solicitudes de autorización previa a la inscripción para los futbolistas extranjeros o españoles no de origen menores de 10 años, que entrará en vigor el día 1 de marzo de 2015. En ningún caso podrá inscribirse a un jugador extranjero o español no de origen menor de 10 años, sin la previa autorización de la RFEF.

[...]

La RFEF resolverá sobre la solicitud de autorización, que deberá cumplir escrupulosamente con los requisitos establecidos en el artículo 19 del Reglamento Sobre el Estatuto y la Transferencia de Jugadores y en el artículo 120 del Reglamento General de la RFEF.”

Unofficial translation into English:

“The clarification that FIFA made on footballers under 10 years of age (previously 12 years of age), modifies the procedure for the registration of foreign players who due to their age do not require an International Transfer Certificate, in that it clarifies that the RFEF, as a member of FIFA, must assume the responsibility of verifying and ensuring that all the requirements for the protection of minors – which are stipulated in Article 19, para. 2 of the Regulations on the Status and Transfer of Players and Article 120 of the RFEF General Regulations – be fulfilled.

In this respect and in order to comply with FIFA’s rule clarified in the aforementioned Circular No. 1468, the RFEF sets up a telematics system for processing registration applications for the registration of foreign or non-national players under 10 years of age, which will enter into force on 1 March 2015. In no case will a foreign or non-national player under 10 years of age be registered without the prior authorization of the RFEF.

[...]

The RFEF will decide on the registration applications, which must comply scrupulously with the requirements established in Article 19 of the Regulations on the Status and Transfer of Players and Article 120 of the RFEF General Regulations.”

12. On 27 March 2015, the Secretariat of the FIFA Disciplinary Committee informed Real Madrid, through the RFEF, that it had launched disciplinary proceedings against it in connection with possible violations of the RSTP.
13. After further requests for information with which Real Madrid complied, FIFA communicated to the Parties on 14 January 2016, the FIFA Disciplinary

Committee's decision in the disciplinary proceeding against Real Madrid. The FIFA Disciplinary Committee found that of the 70 registration of minors investigated, Real Madrid violated the RSTP with regard to 39 of them. More specifically, the FIFA Disciplinary Committee found that Real Madrid had violated:

- Article 19.1 RSTP (the prohibition on the international transfer of minors) in 4 cases: Players 2, 4, 24, and 38.
- Article 19.3 RSTP (prohibition on the first registration of non-national minors) in 4 cases: Players 3, 22, 23, and 39.
- Article 19.4 RSTP, together with Annexes 2 and 3 RSTP, in 4 cases: Players 22, 23, 38, and 39.
- Article 9.1 RSTP (the obligation of waiting to register a player at a new association until receipt of the ITC from the former association) in one case: Player 38.
- Article 5.1 RSTP (the obligation to register players before letting them participate in organised football) in 33 cases: Players 1, 3-14, 16-24, 31, 37, 39, 56, 57, 58, 59, 61, 63, 68, 70; and
- Article 19bis.1 RSTP (the obligation to report to the relevant association all minors attending an academy that has a legal, financial or *de facto* link to the club) in the following cases: Players 1-24, 27, 31, 37, 38, 39, 40, 58, 59, 61, 63, 66, 68 and 70.

14. In light of the violations, the FIFA Disciplinary Committee imposed a registration ban of two complete and consecutive transfer windows, a fine of CHF 360,000, and a reprimand. The operative part of the decision of the FIFA Disciplinary Committee reads:

“1. El club Real Madrid CF es declarado culpable de violaciones del art. 19 apdo. 1 y art. 19 apdo. 3 del Reglamento de la FIFA sobre el Estatuto y la Transferencia de Jugadores, en relación respectivamente, con la prohibición de hacer transferencias internacionales de jugadores menores de 18 años y la prohibición de registrar jugadores menores de 18 años no inscritos previamente y no naturales del país en el que se desea inscribir por primera vez.

2. El club Real Madrid CF es declarado culpable de violaciones al art. 19.4, en conjunto con los anexos 2 y 3 del Reglamento de la FIFA sobre el Estatuto y la Transferencia de Jugadores (procedimiento para la solicitud de la primera inscripción y transferencia internacional de jugadores menores de edad) y del art. 5 apdo. 1, 9.1 apdo. 1 y 19bis apdo. 1 del Reglamento de la FIFA sobre el Estatuto y la Transferencia de Jugadores.

3. En aplicación del art. 12 letra a) y del art. 23 del Código Disciplinario de la FIFA, se prohíbe al club Real Madrid CF inscribir jugadores, tanto a nivel nacional como internacional, durante los dos (2) periodos de transferencia, completos y consecutivos, siguientes a la notificación de la presente decisión. El club podrá inscribir jugadores, tanto en el ámbito nacional como internacional, solo a partir del próximo periodo de inscripción posterior al cumplimiento íntegro de la sanción.

4. *En aplicación del art. 10 letra c) y del art. 15 del Código Disciplinario de la FIFA, se sanciona al Real Madrid CF a pagar una multa por el monto de CHF 360,000 (...)*
5. *En aplicación del art. 10 letra b) y del art. 14 del Código Disciplinario de la FIFA se emite una reprobación en contra del club Real Madrid CF en vista de sus comportamiento y conducta en los hechos aquí descritos.*
6. *Se concede al club Real Madrid CF un plazo de 90 días para regularizar la situación de los jugadores menores de edad en el club. En concreto, el club presentará, sin demora alguna, las debidas solicitudes ante la Sub-comisión de la Comisión del Estatuto del Jugador y ha de cumplir con todas las demás directrices de procedimiento pertinentes en relación a los casos específicos. En caso de que el club obtenga una aprobación por parte de la subcomisión para el registro/transferecia de un jugador particular, el club estará exento de la prohibición impuesta por la presente decisión, para la transferencia/registro de dicho jugador menor autorizado al club.*
7. *La Comisión decide fijar las costas y gastos en CHF 30,000 mismas que en aplicación de lo establecido en el art. 105, apdo. 1 del Código Disciplinario de la FIFA quedan a cargo del club Real Madrid CF (...).”*

Unofficial translation into English:

- “1. *The club Real Madrid CF is found guilty of violating Art. 19, para. 1 and Art. 19, para. 3 of the FIFA Regulations on the Status and Transfer of Players, in relation to, respectively, the prohibition on the international transfer of players under 18 years of age and the prohibition on registering players under 18 years of age who have never previously been registered and are not nationals of the country in which they wish to be registered for the first time.*
2. *The club Real Madrid CF is found guilty of violating Art. 19.4 in conjunction with Annexes 2 and 3 of the FIFA Regulations on the Status and Transfer of Players (the procedure for the application for the first registration and international transfer of minors) and Art. 5, para. 1, 9.1, para. 1 and 19bis, para. 1 of the FIFA Regulations on the Status and Transfer of Players.*
3. *Pursuant to Art. 12, letter a) and Article 23 of the FIFA Disciplinary Code, Real Madrid CF is banned from registering players, either nationally or internationally, for the next two (2) entire and consecutive registration periods following the notification of the present decision. The club may register players, both nationally and internationally, as of the registration period that follows the club’s compliance with the sanction.*
4. *Pursuant to Art. 10 letter (c) and of Art. 15 of the FIFA Disciplinary Code, Real Madrid CF is sanctioned with a fine of CHF 360,000 (...)*
5. *Pursuant to Art. 10 letter (b) and of Art. 14 of the FIFA Disciplinary Code, a reprimand is issued against the club Real Madrid CF in view of its misbehavior and misconduct in the findings described herein.*
6. *The club Real Madrid CF is granted a period of 90 days to regularize the situation of minors at the club. In particular, the club shall submit, without delay, the relevant applications to the Subcommittee of the Players’ Status Committee and shall comply with all other procedural guidelines relevant to the specific cases. In the event that the club obtains an approval of the*

Subcommittee for the registration/transfer of a particular player, the club shall be exempt from the prohibition imposed by the present decision for the transfer/registration to the club of said minor player.

7. The Disciplinary Committee decides to set the costs and expenses at CHF 30,000 which in applying Art. 105, para. 1 of FIFA's Disciplinary Code shall be borne by Real Madrid CF (...)."

15. On 15 January 2016, Real Madrid informed FIFA that it intended to appeal the FIFA Disciplinary Committee's decision to the FIFA Appeal Committee (the "FIFA AC"). Real Madrid went on to appeal that decision on 25 January 2016, requesting the FIFA Appeal Committee to set it aside or, subsidiarily, to reduce the sanction imposed therein.
16. On 8 April 2016, after holding a hearing at FIFA's headquarters, the FIFA AC confirmed the FIFA Disciplinary Committee's decision. While it rendered the operative part of its decision that same day, it did not issue its grounds until 8 September 2016 (the "Appealed Decision"). The FIFA AC ordered as follows:

"1. El recurso interpuesto por el club Real Madrid es rechazado.

2. La decisión de la Comisión Disciplinaria de la FIFA tomada en fecha 23 de julio de 2015 es confirmada en su totalidad.

3. Las costas y gastos de este procedimiento en cuantía de 3,000 CHF correrán a cargo del RM. Este monto se compensa con el monto de 3,000 CHF que fue pagado como depósito".

Unofficial translation into English:

"1. The appeal brought by the Real Madrid club is rejected.

2. The decision of the FIFA Disciplinary Committee taken on 23 July 2015 is fully confirmed.

3. The costs and expenses of this proceeding in the amount of CHF 3,000 shall be borne by RM. This amount is offset by the amount of 3,000 CHF that was paid as a deposit."

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS

17. On 14 September 2016, in accordance with Article R37 of the Code of Sport-related Arbitration (the "Code"), the Appellant filed a Request for Provisional Measures.
18. On 15 September 2016, in accordance with Article R37 of the Code, the Respondent filed its Answer to the Request for Provisional Measures.
19. On 16 September 2016, the President of the CAS Appeals Arbitration Division granted the stay of execution requested by the Appellant.
20. On 27 September 2016, in accordance with Articles R47 and R48 of the Code, the Appellant filed its Statement of Appeal against the Respondent with respect to the Appealed Decision. In its Statement of Appeal, the Appellant requested, as the Parties had previously agreed, (i) an expedited procedure in accordance with Article R52 of the Code so that a decision (with or without grounds) be rendered before the Winter transfer window in Spain, and (ii) a bilingual procedure (English as the

language of the written submissions and the hearing, with no need to translate any documents or testimony submitted in Spanish).

21. On 29 September 2016, the Respondent communicated to the CAS Court Office its agreement with the above procedural requests of the Appellant.
22. On 30 September, the CAS Court office accepted the Parties' proposed procedural calendar and to conduct, as the Parties had requested, an expedited and bilingual procedure (English-Spanish).
23. On 17 October 2016, in accordance with Article R51 of the Code, the Appellant filed its Appeal Brief, in which it *inter alia* requested the production of the Decision of the FIFA Appeals Committee in the matter involving *Club Atlético de Madrid* and FIFA (the "ATM Decision").
24. On 25 October 2016, pursuant to Article R54 of the CAS Code and upon joint nomination by Parties, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, notified the Parties that Mr. Michele A. R. Bernasconi would act as Sole Arbitrator in the present arbitration and that he would be assisted by Mr. Francisco A. Larios as *ad hoc* clerk.
25. On 21 November 2016, in accordance with Article R55 of the Code, the Respondent filed its Answer.
26. On 22 November 2016, the Appellant reiterated its request for production of documents of 17 October 2016.
27. On 29 November 2016, after having taking into due consideration the comments and the arguments submitted by the Parties on the matter, the Sole Arbitrator granted the Appellant's request for production of the ATM Decision.
28. On 5 December 2016, the CAS Court Office sent the Parties the Order of Procedure, which both Parties duly signed and returned on the same day.
29. On 14 December 2016, a hearing was held at the CAS headquarters in Lausanne.
30. Apart from Messrs. Michele A.R. Bernasconi (Sole Arbitrator), Francisco A. Larios (*ad hoc* clerk) and Fabien Cagneux (CAS Counsel), the following persons were in attendance at the hearing:
 - For Appellant: Messrs. Lucas Ferrer (Counsel), Jordi López (Counsel), Javier López Farré (In-house Counsel) and José Angel Sánchez (General Manager); and
 - For Respondent: Mr. Marc Cavaliero (Head of Disciplinary), Ms. Alejandra Salmerón García (Counsel), Mr. Jaime Cambreleng Contreras (Group Leader) and Ms. Kimberly Morris (Head of Integrity and Compliance at TMS).
31. At the hearing, the Appellant called the following witnesses to testify: Mr. José Luís Sánchez Mayoral (an employee of Real Madrid), Mr. Kepa Larumbe (Head of Legal at the RFEF), Mr. Joaquín Rubio Simón (Head of Licenses at the FFM), Prof. Dr. Mariano Bacigalupo Sagesse (Expert in Spanish constitutional law) and Mrs. N. (mother of Player no. 24).
32. At the outset of the hearing, the Parties confirmed they had no objections to the constitution and composition of the arbitral tribunal, and, at the end of the hearing, they acknowledged the Sole Arbitrator had fully respected their rights to be heard.

33. On 20 December 2016, the Sole Arbitrator issued the operative part of the Award.

V. OVERVIEW OF THE PARTIES' POSITIONS

34. The following is a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the Sole Arbitrator has thoroughly considered all of the evidence and arguments submitted by the Parties.

V.1 *Real Madrid Club de Fútbol*

35. In its Appeal Brief, Real Madrid requested for the following relief:

“a. To annul and leave without effect the decision rendered by the FIFA AC in the matter of reference, with the consequent removal of all the sanctions imposed on Real Madrid CF therein.

b. Subsidiarily, and only in the improbable case that the above is rejected, to annul and leave without effect the decision rendered by the FIFA AC in the matter of reference, and to render a new decision in which taken into account all the factors of the case and the guilt's degree, the sanction imposed on Real Madrid is of less gravity than the one imposed in the Appealed Decision, in particular:

i) A reprimand, or

ii) Subsidiarily, a reprimand and a fine for a maximum amount of CHF 360.000 established on the Appealed Decision.

c) Condemn FIFA to pay all legal costs and other expenses incurred by the Appellant with regard to the present procedure.”

36. In support of its requests for relief, Real Madrid submits as follows:

- a) The burden of proof that Real Madrid committed an infraction is on FIFA.
- b) Real Madrid did not violate Articles 19.1 or 19.3 RSTP in the 4 cases of the U-12 Players 2, 3, 4 and 24.
 - The wording of Article 9.4 RSTP (“*An ITC is not required for a player under the age of 12 years*”) and the FIFA Commentary on that provision (“*any transfers before the age of 12 have no effect in relation to the provisions of the Regulations, since the training compensation and solidarity mechanism are calculated only as from this age*”) rendered inapplicable Article 19 RSTP to U-12 players. Therefore, Real Madrid did not have to request approval from the RFEF or the FIFA Subcommittee for the international transfers of Players 2, 4 and 24 and the first registration of Player 3, who were all under 12 at the time of their registration; it only had to request for each of them a license from the FFM. The RFEF confirmed Real Madrid's understanding in its letter of 10 March 2014 in which it stipulated that the regional football associations could register U-12 players “*with no further action*” (“*sin más trámite*”; see *supra* at para. 6) and is corroborated by Mr. Kepa Larumbe's witness statement and FIFA's issuance of Circular no. 1468, in which it expressly stipulated, for the first time, the national association has a responsibility to actually verify that all international transfer and first registration of U-10 (previously U-12)

players satisfy Article 19.2 RSTP. The reference in the FIFA Commentary on provision 9.4 RSTP to compensation and solidarity mechanism does not limit or restrict the scope of Article 9.1. In any event, (i) the principles of estoppel and *contra proferentem* must apply against FIFA considering that Real Madrid relied on the RFEF and FIFA's interpretation of Articles 9.4 and 19 RSTP and said articles are ambiguous and created confusion, and (ii) the transfer of Players 2, 4 and 24 and the first registration of Player 3 satisfied the requirements of Article 19.2(a) RSTP since the players' parents moved to the new club's country for reasons not linked to football, as proven by the evidentiary documentation submitted in the FIFA and CAS proceedings.

- c) Real Madrid did not violate Articles 19.1, 19.3 or Article 19.4, together with Annexes 2 and 3 RSTP, in the 4 cases of Players 22, 23, 38 and 39.
- Player 22 never took part in "organised football" as defined in the RSTP and was never registered with the club. That player only participated in a tryout (in August and September 2013) and two tournaments – the *XVI Torneo Juan Gómez "Juanito"* (the "Juanito Tournament") and the *I Torneo Élite Categoría Cadete* (the "Cadete Tournament") – which did not constitute organised football, as confirmed by the respective tournament organizers, and, in the case of the Juanito Tournament, also by the FFM. The Player's alleged participation in the *Torneo Coca Cola 2013-2014* (the "Coca Cola Tournament"), a tournament that is indeed part of organised football, is inaccurate; the pictures purportedly proving his participation in that tournament are actually from the Juanito Tournament and the Cadete Tournament, as confirmed by the RFEF, FFM, the RM Cadete B coach of the Coca Cola Tournament, and the organizers of the Juanito and Cadete Tournaments. The Player's inclusion on Real Madrid's official website was a mistake. Real Madrid rejected Player 22 after tryouts in 2013, because it determined he did not fall under any exception of Article 19.2 RSTP. Although the Player attempted to tryout again in January 2014, Real Madrid, after noticing that it had already rejected him back in 2013 for not satisfying Article 19.2 RSTP, requested him to abandon the tryout. In light of the above, Real Madrid did not violate Articles 19.3 or 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 22.
 - Player 23 never took part in "organised football" and was never registered with the club. The player only participated in a tryout and two tournaments – the *XIII Torneo Internacional Infantil* (the "Infantil Tournament") and the *Torneo Protti* (the "Protti Tournament") – which did not constitute organised football, as confirmed by the respective tournament organizers. The video of Player 23 in an interview does not support he was a Real Madrid player; it is just a propagandistic act by the player. Given Real Madrid's interest in the player, it requested approval from the FIFA Subcommittee, which denied the request. The club then appealed that denial decision to the CAS but without success, so it gave up employing the player. In light of the above, Real Madrid did not violate Articles 19.3 or 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 23.
 - Player 38's FFM license was placed "in deposit" ("*en depósito*") from 1 September 2013. In a letter to the FFM, Real Madrid requested as follows: "*Rogamos dejen en depósito la licencia federativa del [Jugador 38] con el*

fin de que sea diligenciada en el plazo de contratación de jugadores, a la espera de que llegue el correspondiente CTI del jugador” (Unofficial English translation: “We request that you leave in deposit the federative license of [Player 38] in order for it to be processed within the registration period, pending the arrival of the corresponding ITC of the player.”). That license did not come into force, nor did the Player participate in organised football, until after the FIFA Subcommittee approved his transfer under Article 19.2(b) as a player older than 16 coming from an EU country on 7 November 2014 and after the RFEF obtained the relevant ITC on 28 November 2014. Such course of action is not prohibited by the RSTP. Furthermore, FIFA cannot prevent a player from moving from one EU country to another EU country whenever he wants; it can only prevent him from participating in organised football before obtaining the necessary approval from the FIFA Subcommittee and the ITC. In light of the above, Real Madrid did not violate Articles 9.1 or 19.1 or 19.4 RSTP, together with Annexes 2 or 3 RSTP, in relation to Player 38.

- Player 39 had temporary and provisional authorizations from the FFM to play for Real Madrid from 17 October 2013 to 15 January 2014, 16 January 2014 to 15 March 2014 and finally 16 March 2014 to 21 April 2014. In granting these authorizations, the FFM considered that the player clearly fell under exception where a foreign minor has resided at least 5 years in the country of first registration and that the only reason Real Madrid could not complete his registration was that the legal absence of the player’s father made it so the player could not obtain his passport, a necessary document for his registration. Once Player 39 obtained his passport, Real Madrid applied for approval from the FIFA Subcommittee, who granted it without reproach on 14 April 2014. In light of the above, Real Madrid did not violate Articles 19.3 or 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 39.
- d) Real Madrid did not violate Article 5.1 RSTP in 33 cases. As corroborated by its expert witness, Mr. Mariano Bacigalupo, Spain is composed of 17 regions known as autonomous communities (“*Comunidades Autónomas*” in Spanish) each of which has competence in the field of sport and has its own regional sports associations, which govern their respective sport in a coordinated manner with the national association. In football, the FFM is one of these regional associations and it is integrated within the RFEF and represents it in the region of Madrid, the “*Comunidad Autónoma de Madrid*”. By law, as a club in Madrid, Real Madrid had to mandatorily affiliate to the FFM and to comply its regulations, including those on the licensing and registration of players. Under said regulations, the FFM is the only body competent to issue licenses and registrations for players participating in regional competitions only. Therefore, Real Madrid could not register the 33 players directly with the RFEF, given that they all were to play in regional competitions only; instead, it had to register them with the FFM, who would then communicate the registrations to the RFEF, and who, in turn, would also register them. FIFA has recognized and accepted the RFEF Statutes, which expressly provide that the Spanish regional associations, such as the FFM, exist and represent the RFEF in their respective region. Therefore, FIFA was perfectly aware of and consented to the Spanish sports structure, and it cannot now deviate from that viewpoint. Since Real Madrid registered the 33 minors with the FFM, and all

33 players were subsequently registered with the RFEF, Appellant submits that it complied with Article 5.1 RSTP.

- e) Real Madrid did not violate Article 19bis.1 RSTP in 37 cases. The “Cantera” is not an academy as defined in the RSTP. The Cantera cannot be considered as an internal organization or external separate entity. Actually, Real Madrid is composed of different professional and amateur categories of football (from the “*prebenjamín*” to first division) and all the players therein hold a federative license and are registered as Real Madrid players. In any event, Real Madrid did report all of its minors in accordance with Article 19bis.1 RSTP when it registered them with the FFM. In this regard, it must be emphasized that (i) the FFM forwards its player registrations to the RFEF who, in turn, also registers them and, therefore, both associations were fully aware of the minors’ presence at Real Madrid, and (ii) Article 19bis.1 RSTP does not specify how exactly a club must report its minors to the relevant association.
- f) Subsidiarily, in case the Sole Arbitrator upholds in their entirety or in part the infringements, the sanctions must be reduced.
 - The FIFA Disciplinary Committee and the FIFA AC did not properly evaluate Real Madrid’s conduct under Article 39.4 of the FIFA Disciplinary Code and CAS and Swiss law jurisprudence. They adopted a “general approach”, without taking into account the particular circumstances of the case. The club’s conduct was not “extremely reprehensible”; Real Madrid always acted with extreme care and due diligence and never endangered the well-being of any minors and, moreover, only violated Article 19 RSTP in 8 cases in a span of 9 years. Additionally, the possibility of avoiding or stopping the violations is not a valid criterion to calculate the appropriate sanction.
 - The FIFA Disciplinary Committee and the FIFA AC failed to take into consideration mitigating circumstances: (i) the confusion FIFA and the RFEF created with regard to the registration of U-12 players, (ii) Real Madrid’s full collaboration in FIFA Disciplinary Committee’s investigation, and (iii) Real Madrid’s lack of intent or guilt in violating Article 5.1 RSTP (Real Madrid sought only to comply with the mandatory Spanish laws on the registration of players).
 - The sanction is grossly disproportionate. The FIFA Disciplinary Committee and the FIFA AC mistakenly try to justify the measure of the sanction on the “general prevention principles”. They failed to consider the particular circumstances of the case and to apply a sanction proportionate to the specific offense committed. Further, the sanction is essentially equal to those imposed on FCB and Atlético Madrid (“AM”), but wrongly so. Real Madrid committed far less violations of the RSTP than AM (183 violations, 65 of which were of Article 19.1 and 19.3 RSTP). Finally, transfer bans are reserved for the most serious of offenses based on willful intent (falsifying of documents, inducement of breach of contract, anti-doping, corruption, and match-fixing) must be left as a “last resort”.

V.2 *FIFA*

37. In its Answer, FIFA requested for the following relief:

“1. To reject all the reliefs sought by the Appellant;

2. *To confirm in its entirety the decision hereby appealed against;*
3. *To order the Appellants to bear all costs incurred in connection with these proceedings and to cover all legal expenses of the Respondent in connection with these proceedings”.*

38. In support of its requests for relief, FIFA submits as follows:

- a) Articles 19.1 and 19.3 RSTP prohibit for clubs and national associations the international transfer minors (under 18 years of age) and first registrations of non-national minors, unless the minor satisfies one of the exceptions listed in Article 19.2 RSTP.
- b) Real Madrid violated Articles 19.1 or 19.3 RSTP in the 4 cases of the U-12 Players 2, 3, 4 and 24.
 - Real Madrid takes an incorrect approach with regard to the registration of U-12 players. Article 9.4 and Article 19 RSTP refer to different obligations. The former deals with the obligation to obtain an ITC prior to the registration of a player, whereas the latter deals with the prohibition of transferring/registering for the first time minors. Therefore, Article 19 RSTP applies to all players under 18, irrespective of whether an ITC was necessary.
 - There are no grounds to sustain that the limitation established in 9.4 RSTP – that U-12 players (U-10 from March 2015 onward) do not require an ITC – is applicable to or in any way affects the general prohibition of Article 19 RSTP. The Commentary on Article 9.4 RSTP only provides an explanation of the contents of that provision (not of Article 19.4) and simply confirms that no ITC is required for U-12 players since solidarity contribution and training compensation are calculated from that age. It would make no sense to be less strict with U-12 players than with those players aged between 12 and 17. Articles 9.4 and 19 RSTP must be interpreted in a manner that promotes their coexistence (CAS 2014/A/3783) and Article 9.4 RSTP cannot be interpreted as granting a license for breaching the general prohibition of Article 19 RSTP (CAS 2014/A/3813).
 - FIFA confirmed, in its letter dated 17 April 2014 (see *supra* at para. 7), that member football associations had the responsibility of ensuring its club’s compliance with Article 19 RSTP. FIFA’s Circular no. 1468 merely reduced the age for which an ITC is required from 12 to 10, but it does not infer in any way that U-12 players were previously exempt from the general prohibition of Article 19 RSTP.
 - The doctrines of estoppel and *venire contra factum proprium* are inapplicable to Real Madrid’s case as FIFA never suggested in any communication (or acted in any manner that would create the expectation) that U-12 players were exempt from Article 19 RSTP. The principle of *in dubio contra stipulatorem* is also inapplicable as the relevant FIFA regulations are clear and their interpretation confirmed in CAS 2014/A/3783 and CAS 2014/A/3813. Indeed, since 2009 FIFA only received 6 requests from its 209-member football associations for clarification on the registration of U-12 players (from the associations of Korea, Qatar, France, Macedonia, Israel and Hungary).

- For the international transfer or first registration of a U-12 player, Real Madrid, as any club, had the obligation to contact the national association concerned, the RFEF, and provide it with all the necessary information/documentation so that the association could verify whether the relevant minor satisfied an exception of Article 19.2 RSTP. However, for transfer of Players 2, 4 and 24 and the first registration of Player 3, Real Madrid did not contact the RFEF or send any relevant information/documentation to it and, thus, that association did not analyze or verify the international transfers or first registration's compliance with Article 19.2 RSTP. All four U-12 players were transferred without any kind of authorization from the RFEF. Although it is now too late to assess whether the international transfers or first registrations satisfied Article 19.2(a) RSTP, from the evidence submitted in the FIFA and CAS proceedings, it is anyhow evident that the players' parents moved to Spain for reasons, either fully or partially, linked to football, and, that being the case, that the moves did not satisfy that exception.
- c) Real Madrid violated Articles 19.1 or 19.3 and Article 19.4 RSTP, together with Annexes 2 and 3 RSTP, in the 4 cases of Players 22, 23, 38 and 39.
- "Organised football" is clearly defined as "*association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them*". It covers both official matches and friendly matches. The fact that the organizing club declares its tournament as falling outside the concept of organised football is irrelevant. The fact that an organizer does not comply with its obligation to request authorization for a tournament does not cause it to fall outside the scope of organised football.
 - An extended tryout cannot be used to circumvent Article 19 RSTP.
 - Player 22 trained with Real Madrid from 27 August 2013 to 30 September 2013. Then, even though at end of September 2013 Real Madrid apparently determined that the player did not fall into an exception of Article 19.2 RSTP and decided not to sign him, the Player returned to Real Madrid again in January 2014, where he continued to train with the club until it received a TMS' request for information. During his time with Real Madrid, which cannot be considered as a trial, Player 22 participated in organised football, in particular the Coca Cola Tournament, the Cadete Tournament, and the Juanito Tournament. However, despite his considerable amount of time at Real Madrid and participation in organised football, the Player did not satisfy an exception of Article 19.2 RSTP and the club never obtained approval of the FIFA Subcommittee as required under Article 19.4 RSTP. In light of the foregoing, Real Madrid violated Articles 19.3 and 19.4 RSTP, together with Annexes 2 and 3 RSTP.
 - Player 23 trained at Real Madrid from 9 to 22 October 2012, 21 January to 13 June 2013, and 2 September 2013 to 23 January 2014. However, it was not until 18 October 2013 that the RFEF applied, on behalf of Real Madrid, for approval of the FIFA Subcommittee based on the exception of Article 19.2(a). On 1 November 2013, the FIFA Subcommittee rejected the application, the grounds of which were notified on 30 April 2014. Despite the negative decision, Player 23 remained with Real Madrid for another three months. During his lengthy stay at Real Madrid – which cannot be

considered as a trial –, the Player participated in organised football, specifically the Infantil Tournament and the Protti Tournament. In light of the foregoing, Real Madrid violated Articles 19.3 and 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 23.

- Player 38 had an FFM license “in deposit” (“*en depósito*”) and Player 39 had temporary and provisional authorizations from the FFM to play for Real Madrid. However, registration and/or inclusion within the new club can only occur after the approval of the relevant body – here the FIFA Subcommittee – and the ITC has been obtained. In incorporating the player before knowing whether the application would be accepted or rejected by the FIFA Subcommittee, Real Madrid violated Articles 9.1, 19.1, and 19.4 RSTP, together with Annexes 2 or 3 RSTP, in relation to Player 38, and Articles 19.3 and 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 39.
- d) Real Madrid violated Article 5.1 RSTP in 33 cases. Pursuant to Article 5.1 RSTP, Real Madrid had to register its players with its “association” before participating in organised football. The relevant association under Article 5.1 RSTP is the RFEF and not the FFM, as confirmed in CAS 2014/A/3793 and CAS 2014/A/3813. That regional association is just part of the internal structure of the RFEF, but is neither recognized by FIFA nor a FIFA member. In fact, FIFA does not recognize any association below the national-association level. A registration at the FFM cannot satisfy the obligation to register a player under Article 5.1, even though it may suffice from a national law perspective. The internal organization of the RFEF and the legal framework of Spain have no impact on the primary application of the regulations of FIFA. In any case, Spanish law, the RFEF Regulations and FIFA rules do not conflict with each other (*i.e.* they “*exist parallel to each other, creating in any case different types of obligations to the parties affected*”), and even if they did, Real Madrid, as a football club within the definition of the FIFA Statutes would remain obliged to primarily comply with the regulations of FIFA. It is untrue that FIFA approved the RFEF Regulations and its delegation of registration powers to the FFM and, in any event, the review process of review of the statutes of a national member association is not an exhaustive examination but rather only intended to guarantee that the statutes meet a set of minimum standards. Considering that Real Madrid only registered the 33 players at with the FFM and that all of them participated in organised football, Appellant has breached Article 5.1 RSTP.
- e) Real Madrid violated Article 19bis.1 RSTP in 37 cases. The “Cantera” is an academy as defined in point 12 of the RSTP Definitions. An academy can be an organization within a club or a legally independent body and must be construed generally and not narrowly. The Cantera is not simply one of the categories within Real Madrid’s structure; it has its own sporting facilities, residence, and medical staff, and its purpose is to train young players as a long-term objective in order for them to become professional football players. Even Real Madrid refers to the Cantera as an academy in its official website and promotional videos. As an academy with legal, financial or *de facto* links to the club, Real Madrid had the obligation under Article 19bis.1 to report all minors that attended it to the association upon whose territory the academy operates, the RFEF. This obligation is additional, separate and independent of

the registration obligations in Article 5.1 and 19.4 RSTP. By registering a player with the FFM, Real Madrid did not automatically comply with the obligation to report under Article 19bis.1, as confirmed in CAS 2014/A/3793. Since Real Madrid has failed to submit any documentary evidence to support that it reported any of the 37 minors cited, it has violated Article 19bis.1 RSTP.

- f) The sanction the FIFA Disciplinary Committee imposed and the AC confirmed on Real Madrid is appropriate. FIFA acted correctly in concluding that, since Real Madrid committed several infractions, the sanction must be based on the most serious offense committed – those directly connected with Article 19.1 and 19.3 RSTP – and then increased depending on the specific circumstances. The FIFA Disciplinary Committee and the FIFA AC did analyze the particular circumstances of the case and properly determined that:
- that Real Madrid’s behaviour was “severely reprehensible”, as it breached a protected legal asset, prioritized its sporting and financial interest over the interest of the minors, and committed the violations throughout an extended period of time.
 - no mitigating circumstances applied to the case, as (i) the RSTP Regulations are clear and create no confusion, (ii) Real Madrid did not act transparently in the investigation, (iii) there is no conflict between the Spanish legal system and Article 5.1 RSTP, and (iv) there is a lack of guilt or remorse on the part of Real Madrid.
 - aggravating circumstances applied to the case, namely, that Real Madrid’s conduct was severely reprehensible and that the club’s conduct had severe implications within the financial confines of clubs involved in the training of minor players.
- g) The sanction imposed on Real Madrid is proportionate. In assessing the proper sanction, the FIFA Disciplinary Committee and the FIFA AC took into account the gravity of the illegal act committed, the power to dissuade the offender from repeating the same violation in the future, and (iii) the importance of the rule of law that is being protected. The FIFA Disciplinary Committee imposed a mid-level sanction, but one that would have a sufficient dissuasive effect. Any lesser sanction would not have dissuaded Real Madrid from repeating its misconduct in the future. The sanction imposed on Real Madrid is also proportional to those imposed on FCB and AM.

VI. JURISDICTION, APPLICABLE LAW AND ADMISSIBILITY

VI.1 Jurisdiction

39. The jurisdiction of the CAS derives from Article R47 of the Code and Articles 57.1 and 58 of the FIFA Statutes (2016 edition).
40. According to Article R47 of the Code: “*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide... and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*”.

41. Articles 57.1 and 58 of the FIFA Statutes provide, respectively:
- *“FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents”*; and
 - *“Appeals against final decisions passed by FIFA’s legal bodies... shall be lodged with CAS...”*.
42. The Parties do not dispute the jurisdiction of the CAS and, moreover, confirmed it by signing the Order of Procedure. Furthermore, the Parties do not dispute the Appellant’s exhaustion of legal remedies. Finally, the Parties had agreed to submit the dispute to a sole arbitrator, instead of a panel of three members, in accordance with Article R50 of the Code.
43. The Sole Arbitrator thus holds that the CAS has jurisdiction to hear the present dispute.

VI.2 Admissibility

44. According to Article R49 of the Code, *“[i]n 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...”*
45. The FIFA Statutes do provide a time limit for an appeal to the CAS in Article 58: *“Appeals against final decisions passed by FIFA’s legal bodies... shall be lodged with CAS within 21 days of notification of the decision in question.”*
46. FIFA notified the grounds of the Appealed Decision to the Parties on 8 September 2016. The Appellant then lodged an appeal against that decision on 27 September 2016, *i.e.* within the 21 days allotted in Article 58 of the FIFA Statutes. It follows that the Appellant’s appeal is admissible.

VI.2 Applicable law

47. Pursuant to Article R58 of the CAS Code: *“[t]he Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.
48. Article 57.2 of the FIFA Statutes provides that *“[t]he provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*.
49. Therefore, the Sole Arbitrator finds that it must decide the present dispute in accordance with the FIFA Regulations (more specifically, the RSTP, the FIFA Statutes and the FIFA Disciplinary Code) and, subsidiarily, Swiss law. In this connection, the Sole Arbitrator notes that various editions of the RSTP would be applicable to the present dispute since the alleged breaches occurred at different times between 2008 and 2014. That said, as the Parties have agreed, for the sake of simplicity and considering that the relevant substance of the relevant provisions have not changed during that time span, the Sole Arbitrator shall apply the 2012

edition of the RSTP in this Award. The Sole Arbitrator shall also apply the 2011 FIFA Disciplinary Code as that is the latest version.

VII. MERITS

VII.1 *On the registration of U-12 Players 2, 3, 4 and 24.*

50. Article 19.1 RSTP imposes a ban on the international transfer of minors except where one of the three exceptions of Article 19.2 is satisfied:
- “1. International transfers of players are only permitted if the player is over the age of 18.*
- 2. The following three exceptions to this rule apply:*
- a) The player’s parents move to the country in which the new club is located for reasons not linked to football.*
- b) The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18.*
- c) The player lives no further than 50km from a national border and the club with which the player wishes to be registered in the neighbouring association is also within 50km of that border...”.*
51. Article 19.3 RSTP then extends this ban to first registrations of non-national minors: *“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”.*
52. In the Appealed Decision, the FIFA AC upheld violations of Article 19.1 RSTP in relation to three players (Players 2, 4, 24) and 19.3 RSTP in relation to one player (Player 3).
53. Real Madrid does not contest that Articles 19.1 and 19.3 respectively prohibit the international transfer and first registration of minors. However, Real Madrid, contrary to FIFA’s position, does not consider that it extends to minors under the age of 12 years old. Additionally, Real Madrid is of the view that, in any case, all the minors it registered satisfied the exception of Article 19.2(a) RSTP (see *supra* at para. 36(b)). FIFA disagrees and claims that in order to register a U-12 player, the national association of the registering club – here the RFEF – had to verify compliance with Article 19 RSTP (see *supra* at para. 38(b)). In other words, FIFA’s position is that also for players below 12, the existence of an exception must be verified and admitted by the relevant body.
54. In light of the Parties’ dispute, the Sole Arbitrator must determine what was the procedure for international transfer of minors and first registration of non-nationals under the age of 12. For the avoidance of doubt, the considerations to follow do not touch on the legal issue of whether or not FFM’s role was an appropriate or relevant one: that issue will be dealt with later in this Award. Also, the below considerations refer to players under the age of 12, because that was the minimum age at the relevant time, *i.e.* before FIFA decided to lower it to 10 years in 2015.
55. FIFA has made it clear that it is reproaching Real Madrid for not having provided the RFEF with the information/documentation necessary for that national

association to assess whether an Article 19.2 RSTP exception applied (*i.e.* for the club not having proved that it complied with the requirements of Article 19.2 RSTP). The Sole Arbitrator has serious doubts, however, whether before March 2015 (*i.e.* at the time of Real Madrid's registration of Players 2, 3, 4 and 24) a club wishing to register a U-12 player had to provide its national association with all the necessary information/documentation for it to verify compliance with Article 19.2 RSTP and the existence of an exception, respectively. The Sole Arbitrator's doubts arise from the totality of the following circumstances:

- The lack of an explicit rule: No rule at FIFA level explicitly stipulates that, for the international transfer or the first registration of a U-12 minor, a club must prove to its national association that one of the exceptions of Article 19.2 RSTP applies. Nor is there a rule specifying that it is the FIFA Subcommittee that has to take such a decision.
- Real Madrid's behaviour and the RFEF's confirmation of 10 March 2014: Based on its interpretation of the RSTP and the RFEF's practice, Real Madrid always registered U-12 players with the FFM without requesting authorization from the RFEF or the FIFA Subcommittee. To verify that it had interpreted and applied correctly the rules concerning the registration of U-12 players, Real Madrid contacted the RFEF, that declared unequivocally, in its letter of 10 March 2014, that players of that age category did not need the approval of the RFEF nor of the FIFA Subcommittee and that, accordingly, the regional associations were supposed to register them "*without further action*" (in the Spanish original: "*sin más trámite*"; see *supra* at para. 6), that is to say, that the RFEF did not apply the regime of Article 19.2 RSTP to U-12 players.

FIFA also argues that it was only in March 2014 – *i.e.* after having enrolled *inter alia* players 2, 3 and 4 for several years and after becoming aware of possible investigations against its rival – that Real Madrid requested clarification regarding under 12 players to its association. The Sole Arbitrator, however, notes that it cannot be reproached to Real Madrid not having requested any clarification until March 2014, because until that point in time, there were no signs tending to show that the Appellant had been interpreting the RSTP in a manner inconsistent with FIFA's supposed view.

- FIFA's letter of 17 April 2014: When the RFEF later sought confirmation of its interpretation on the same topic from FIFA, the international association stated in its letter of 17 April 2014 that a national association in requesting an ITC and/or carrying out a first registration on behalf of a club for a U-12 player did not need the approval of the FIFA Subcommittee, but "*carrie[d] a greater responsibility of ensuring that the well-being of the minors in question is not under threat... in line with the spirit and principles of the relevant regulations on the protection of minors...*" (see *supra* at para. 7). This letter is telling about the scope of Article 19 RSTP as FIFA noticeably did not declare that national associations must directly apply Article 19 RSTP to the registration of U-12 players; it instead took a vaguer and more general approach.

This shall not be interpreted as a criticism to FIFA or to the authors of that letter: by focusing on the well-being of the minors in question, FIFA was, understandably, highlighting the necessity for clubs and national associations to act in a careful and responsible manner. What that means in practical terms is not the subject of the present dispute. The Sole Arbitrator can only remark that

obviously FIFA was and is able to impose disciplinary sanctions on a national member association and/or on a club in case of behaviors that violate either the procedural obligations set out in the RSTP, and Annexe 2 of the RSTP in particular, or other duties set out in the FIFA Statutes, the FIFA Disciplinary Code and in other, applicable FIFA set of rules. Whether or not one day FIFA will expand the regulatory regime of the protections of minors in the RSTP, adding explicitly the possibility to sanction a national member association and/or a club in case of behaviors that are not procedurally wrong, but that are because of their substance against the interests of well-being of a certain minor, is a question that the Sole Arbitrator must leave to the legislator to decide.

- FIFA's Circular no. 1468: It was not until the introduction of the FIFA Circular no. 1468, dated 23 January 2015, that FIFA took a definite approach and expressly indicated, for the first time, that the national associations and FIFA, respectively, would have the obligation to directly apply Article 19 RSTP – and the verification regime of the existence of exceptions under Article 19.2 RSTP – to the registration of U-12 players starting from March 2015. The FIFA Circular no. 1468 reads in the relevant part: "[...] *we deem it important to point out and clarify that if a member association intends to register under the age of 10 (currently 12), despite the fact that no ITC and no application to the sub-committee appointed by the Players' Status Committee will be required, it is all the more responsibility of this association to verify and ensure that the requirements for the protection of minors established in art. 19 par. 2 of the regulations are met*" (emphasis added).
- The RFEF's Circulars nos. 33 and 37: Following FIFA's Circular no. 1468, the RFEF, in Circulars nos. 33 and 37, explained FIFA's amendment to Article 9.4 RSTP, noting that FIFA had modified the procedure for the registration of players who, because of their age, did not need an ITC (see *supra* at para. 11). It pointed out that the national association would now, from March 2015 onward, assume responsibility for verifying and ensuring that all requirements for the protection of minors, *i.e.* Article 19.2 RSTP, are satisfied, and that, therefore, no players under the age of 10 could be registered without RFEF's authorization.

The RFEF went on to inform its clubs that, in order to comply with the FIFA's new directives, the RFEF had set up a telematics system to process authorization applications for this age category of players. In this sense, the RFEF confirmed that prior to FIFA's Circular no. 1468, it had no system for assessing compliance with Article 19.2 RSTP for the international transfer or first registration of U-12 players, as its interpretation of the RSTP did not require clubs to seek authorization from its national association nor from FIFA for such moves. This shall not be interpreted as a criticism of the RFEF. In fact, as it will be shown below, based on the information produced and the submissions made by both Parties in the present proceedings, the Sole Arbitrator has reasons to believe that the RFEF was not the only national member association that, before the issuance of the FIFA Circular no. 1468, did not verify and did not decide on the existence of an exception as per Article 19.2 RSTP for players under the age of 12. This was in fact not disputed by the Respondent at the hearing.

- The declarations of Mr. Kepa Larumbe, Head of Legal at the RFEF: the aforementioned is corroborated by Mr. Kepa Larumbe's witness statement and hearing testimony, in which he affirmed that prior to the issuance of the FIFA

Circular 1468, the RFEF, same as the rest of the world, had always understood and transmitted to its clubs that no authorization from the FIFA Subcommittee or of the RFEF was necessary in order to register U-12 players since, prior to it, the RSTP did not apply to that category of players. That is, before FIFA's amendment in March 2015, the RFEF did not check, as it did not have the obligation, whether international transfers or first registrations of U-12 players to Spanish clubs satisfied an exception under Article 19.2 RSTP. In Mr. Kepa Larumbe's own words:

“El entendimiento que siempre ha tenido la RFEF en relación con la inscripción de los jugadores extranjeros menores de 12 años es que los mismos no precisan para su inscripción de la aprobación de la Subcomisión de menores de FIFA, bastando con que las propias federaciones de ámbito autonómico los inscriban para participar en las competencias que organizan, dado que las disposiciones del Reglamento sobre el Estatuto y la Transferencia de Jugadores no tienen efecto alguno sobre tales jugadores. Dicho entendimiento es el que además la RFEF ha siempre transmitido a sus clubes afiliados entre ellos el Real Madrid. Ello, de conformidad con lo establecido en el artículo 9 del Reglamento sobre el Estatuto y la Transferencia de Jugadores y la interpretación oficial de FIFA realizada en los “Comentarios” de dicha norma. Este entendimiento de la RFEF cambio a raíz de la publicación por FIFA de la circular 1468 de 23 de enero de 2015, en el que, además de reducir la edad a 10 años, se clarifica el artículo 9 del Reglamento y por primera vez se especifica que los jugadores menores de dicha edad necesitan de la autorización a que hace referencia el artículo 19.2, a pesar de no necesitar CTI.”

Unofficial translation into English:

“The understanding that the RFEF has always had regarding the registration of foreign players under the age of 12 is that their registration did not require the approval of the FIFA Subcommittee for minors. It was sufficient that the autonomous federations register them to participate in the competitions which they organize, since the provisions of the Regulations on the Status and Transfer of Players have no effect on such players. This understanding is also the one that the RFEF has always communicated to its affiliated clubs including Real Madrid. This in accordance with Article 9 of the Regulations on the Status and Transfer of Players and the official interpretation of FIFA made in the "Commentary" of those regulations. The RFEF's understanding changed as a result of FIFA's publication of circular 1468 dated January 23, 2015, in which it, in addition to reducing the age to 10 years, clarified Article 9 of the Regulation[s on the Status and Transfer of Players] and for the first time specified that players under that age needed the authorization referred to in article 19.2, despite not needing an ITC.”

- FIFA's own non-application of Article 19.2 RSTP to U-12 players: As evident in CAS 2011/A/2494, FIFA did not – or at least: did not always – require its member national associations to apply Article 19 RSTP to U-12 players. In that case, the FIFA Subcommittee rejected the authorization request of the international transfer to FC Girondins de Bordeaux of the young player Valentin Vada, at that time 15 years old, having concluded that it could not be clearly established that his parents moved to France for reasons not linked to football. However, at the same time, FIFA knew but did not have any issue with

the registration to the same club of Valentin's younger brother who was then 5 years of age, *i.e.* under 12. In fact, the CAS Award 2011/A/2494 shows that FIFA was very well aware of the fact that a U-12 player was playing with FC Girondins de Bordeaux, but nevertheless FIFA limited its regulatory action to the middle brother, Valentin, who was over 12 but under 18 years old. The relevant part of the CAS Award reads as follows: "*Il s'agit néanmoins de préciser que seul Valentin Vada tombe sous le coup de l'article 19 RSTJ, son frère aîné étant majeur et son frère cadet trop jeune pour devoir acquérir une licence*" (Unofficial translation into English: "*Nevertheless, it should be clarified that only Valentin Vada is subject to Article 19 RSTP, as his older brother is of age and his younger brother is too young to have to acquire a license*"; CAS 2011/A/2494, at para. 75). During the hearing of the present procedure, the Sole Arbitrator drew the attention of FIFA to such part of the CAS 2011/A/2494 Award and asked FIFA to comment on it; however, FIFA was unable to make any remark that would raise any doubt about the above interpretation inferred from that case, *i.e.* that also FIFA was not applying the exceptions regime of Art. 19.2 RSTP to players under the age of 12.

56. Certainly, with the issuance of the FIFA's Circular no. 1468, it became rather clear that clubs and national member associations had to begin observing and respecting the ban on the transfer or first registration of all minors, including those below the age of 10. Accordingly, FIFA has today the right, should a club infringe that obligation, to impose a sanction. How, in practical terms, the national member associations and FIFA will deal with the likely very high number of cases every year, is another question, and is not an issue to be solved by the Sole Arbitrator in this case. By clarifying that no child, including children under 10, shall be entitled to begin playing in a foreign country if no exception under Article 19.2 RSTP FIFA has been verified and accepted by the competent body, FIFA has taken a very clear, but also a very strict approach, focused on the well-being of children. One shall hope that FIFA and its national member associations will be in position to develop systems and procedures to ensure that such an approach is applied worldwide in an effective, consistent, fair and reasonable way, without putting an unbearable administrative burden on national member associations.
57. Coming back to the status of the legal framework before the issuance of FIFA Circular no. 1468, for the reasons already mentioned, the Sole Arbitrator is not satisfied that prior to the issuance of the FIFA Circular no. 1468, clubs had an obligation to obtain a favorable decision under Article 19.2 RSTP for players under the age of 12.
58. At the hearing of the present matter, the Sole Arbitrator asked FIFA to comment on the number of decisions of the FIFA Subcommittee and of national member associations in the years before or around the issuance of FIFA Circular no. 1468, asking in particular to disclose the number of decisions relating to the application of Article 19.2 RSTP to U-12 players; yet, FIFA was unable to make any relevant submissions. This comforted the Sole Arbitrator's belief, formed from the other evidence before the court, that as a matter of fact, since the existence of the RSTP, there was, as confirmed by the witness Mr. Kepa Larumbe, a general understanding that the regulatory power of the RSTP was limited to players of 12 years or older. This belief was further bolstered by the fact that FIFA was not able to provide any reliable argument or evidence that the case of Valentin Vada's U-12 brother (see *supra* at para. 55, last bullet point) was an exceptional circumstance. That is, during

the proceedings, the Sole Arbitrator became satisfied that not only the RFEF, but the world of Organized football did not, generally, apply the full-fledged procedure of determination of an exception under Article 19.2 RSTP to children below the age of 12.

59. FIFA referred in its submissions to the findings on this legal issue of the panel in the case *CAS 2014/A/3793*. The Sole Arbitrator notes that in the *CAS 2014/A/3793* case, the panel seems to be of the view that "[...] *players under 12 can be transferred only if the club requesting registration has proven that it complies with the requirements embedded in Article 19.2 RSTP*" (*CAS 2014/A/3793* at para. 9.8). That interpretation of the RSTP is, by itself, defensible and, indeed, the panel in that case explained well the reasons for reaching it. In the present proceedings, however, the Sole Arbitrator had access to additional evidence and new, convincing legal arguments that led to the determination that before the issuance of the FIFA Circular no. 1468 it was generally accepted, in Spain as in other countries (as explained at the hearing by the witness Mr. Kepa Larumbe) and by FIFA as well, that neither national member associations nor FIFA had to verify and/or decide on the existence of an exception under Article 19.2 RSTP for the transfer or first registration of U-12 players. As it was stated in FIFA's letter of 17 April 2014, a national association, in requesting an ITC and/or carrying out a first registration on behalf of a club for a U-12 player, did not need the approval of the FIFA Subcommittee, but "*carrie[d] a greater responsibility of ensuring that the well-being of the minors in question is not under threat... in line with the spirit and principles of the relevant regulations on the protection of minors...*". The evidence before the Sole Arbitrator has demonstrated that the reality was that national member associations and FIFA did not – or at least not always – deal with that obligation of care by submitting strictly all cases of U-12 players to a procedure of determination of an exception as per Article 19.2 RSTP and to a detailed decision of the national association or of the FIFA Subcommittee, respectively. For these reasons, the Sole Arbitrator is not in a position to follow *ad litteram* the considerations of the Panel of the case *CAS 2014/A/3793*.
60. Bearing all the above in mind, and given that the FIFA Circular no. 1468, as a substantive rule change, cannot be applied retroactively (*CAS 2004/A/635*, para. 47; *CAS 2005/C/841* at para. 51; *CAS 2008/A/1545* at para. 10; *CAS 2009/A/2019* at para. 19), the Sole Arbitrator finds that Real Madrid has not committed any RSTP infraction under Art. 19 RSTP in relation to Players 2, 3, 4 and 24.
61. This first, interim conclusion shall not be misinterpreted. By accepting that under the regime existing before the FIFA Circular no. 1468 a club was not requested to obtain from its national member association or from FIFA a decision confirming the existence of an exception under Article 19.2 RSTP, one shall not discern that a club was free to deal with children "as it wanted". In reality, as stated in the FIFA's letter of 17 April 2014, a club had to carry a great responsibility "*of ensuring that the well-being of the minors in question is not under threat... in line with the spirit and principles of the relevant regulations on the protection of minors...*". As for the practical meaning of such obligations, one shall refer to the above consideration (*cf.* para. 55 and 56 *supra*).

VII.2 *On the alleged violations of Article 19 RSTP in relation to Players 22 and 23*

62. Article 19.3 RSTP imposes a ban on the first registration of non-national minors except where an exception of Article 19.2 is satisfied (see *supra* at para. 50 and 51). Then, Article 19.4 RSTP, together with Annexes 2 and 3, provide that the application for such registrations must be done through the Transfer Matching System (“TMS”) and requires the approval of the FIFA Subcommittee:

Article 19.4 reads as follows: “*Every international transfer according to paragraph 2 and every first registration according to paragraph 3 is subject to the approval of the subcommittee appointed by the Players’ Status Committee for that purpose. The application for approval shall be submitted by the association that wishes to register the player. The former association shall be given the opportunity to submit its position. The sub-committee’s approval shall be obtained prior to any request from an association for an International Transfer Certificate and/ or a first registration. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code. In addition to the association that failed to apply to the sub-committee, sanctions may also be imposed on the former association for issuing an International Transfer Certificate without the approval of the sub-committee, as well as on the clubs that reached an agreement for the transfer of a minor*”.

Annexe 2, para. 1.1 reads as follows: “*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*”.

Annexe 3, para. 1.3 reads as follows: “*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)*”.

63. In the Appealed Decision, the FIFA AC upheld violations of Articles 19.3 and 19.4 and of Annexes 2 and 3 RSTP in relation to Players 22 and 23.
64. Real Madrid does not contest that Article 19.3 prohibits the first registration of non-national minors. Nor does it deny that, pursuant to Annexes 2 and 3 RSTP, such registrations had to be done through TMS and required the approval of the FIFA Subcommittee. However, Real Madrid, contrary to FIFA’s position, does not consider that it infringed Article 19.3 and Annexes 2 and 3 RSTP in relation to Players 22 and 23, as they only trained with the club and participated in non-organised football as part of a tryout and were never registered (see *supra* at para. 36(c)). FIFA, on the other hand, considers that a violation of those provisions did occur in relation to both players, since they joined the club, partook in extended tryouts and played in Organised football – this constituting a first registration within the meaning of Article 19.3 RSTP – without satisfying an exception of 19.2 RSTP or obtaining authorization to register from the FIFA Subcommittee (see *supra* at para. 38(c)).

65. The question for the Sole Arbitrator is thus whether Player 22 and 23 participated in trainings and Organised football with Real Madrid before registration and, if so, whether this constitutes a violation of Articles 19.3 and 19.4 and Annexes 2 and 3 RSTP.
66. The Sole Arbitrator first observes that it is true that both Players 22 and 23 trained with Real Madrid. Player 22 did so from 27 August 2013 until 30 September 2013 and again in January 2014, and Player 23 did so from 9 until 22 October 2012, 21 January until 13 June 2013, and 2 September 2013 until 23 January 2014, as Real Madrid acknowledged in a letter to FIFA TMS dated 24 April 2014. That letter reads in the relevant part: *“El jugador [23], estuvo a prueba con nosotros antes de tramitar su licencia, esto es: Desde el 9 al 22 de Octubre de 2012. Asimismo, desde el 21 de Enero al 15 de Junio de 2013 y finalmente desde el 2 de Septiembre al 23 de Enero de 2014... Bien es cierto que, el jugador [22] estuvo entrenando con el Club desde el 26 Agosto hasta el 30 de Septiembre de 2013, fecha en la que retornó a [País X.]. Por razones familiares volvieron a España, y comenzó a entrenar de nuevo con nosotros desde el 7 de Enero al 23 de Enero de 2014, hasta que se recibió su solicitud de información del jugador, prohibiéndole seguir acudiendo a los entrenamientos para evitar cualquier problema”* (Unofficial translation into English: *“The Player [23] tried out with us before applying for his license, that is: from 9 to 22 October 2012. Additionally, from 21 January until 15 June 2013 and finally from 2 September to 23 January 2014... It is true that the Player [22] was training with the Club since 26 August until 30 September 2013, at which time he returned to [Country X.]. For family reasons they came back to Spain and he began training once again with us from 7 January until 23 January 2014, until we received a request for information about the player, and prohibited him from continuing to attend trainings to avoid any problems”*). With reference to Player 22, the Sole Arbitrator notes that his second stint in January must have commenced before the date in the aforementioned letter, *i.e.* 7 January 2014, since he participated, as has remained undisputed, in the *I Torneo Élite Categoría Cadete* from 2-4 January 2014 (the “Cadete” Tournament”).
67. Apart from the trainings, the Sole Arbitrator further observes that Players 22 and 23 participated in several tournaments – Player 22 in the Juanito Tournament on 14-15 September 2013 and, as mentioned, the Cadete Tournament, and Player 23 in the Infantil Tournament on 20, 21, and 22 September 2013 and the Torneo Protti on 16-20 May 2013 – that nature of which the Parties dispute.
68. In this respect, the Sole Arbitrator notes that the term “Organised football” is a defined term in the RSTP; the definition reads as follows: *“Organised football: association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them.”* In *CAS 2011/A/2635*, the panel determined that only clubs affiliated to a national association are part of Organised football. In *CAS 2012/A/2983*, the CAS determined that a player that has terminated his football career and is no longer registered with a national association is no longer part of Organised football.
69. The Sole Arbitrator agrees with FIFA that just because an organizer does not comply with its obligation to request authorization for a tournament, this does not cause it to fall outside the scope of Organised football. However, in the present case, and based on the evidence submitted in these proceedings, the Sole Arbitrator is satisfied that the Juanito Tournament 2013, the Cadete Tournament 2013, the Infantil Tournament 2013 and the Torneo Protti 2013 have neither been organised

nor authorised by the FFM, the RFEF, UEFA or FIFA. Further, the Sole Arbitrator remarks that no convincing evidence has been submitted to demonstrate that the organizer of the mentioned tournaments had violated an obligation to request the relevant authorizations and that consequently they have been object of disciplinary sanctions by the competent national or international bodies. Therefore, on the basis of the evidence submitted, those tournaments cannot be considered to fall under the concept of "Organised football" as defined by the RSTP.

70. Although the Coca Cola Tournament 2013-2014, as it has remained undisputed among the Parties, is part of Organised football, the Sole Arbitrator finds that FIFA has failed to provide sufficient, convincing evidence to prove that Player 22 participated in that tournament. Even though the Coca Cola Tournament's official website mentions the presence of the Player and includes pictures of him allegedly playing at that tournament, the RFEF, FFM, Cadete B coach of the Coca Cola Tournament, and the organizers of the Juanito and the Cadete Tournaments have all submitted declarations confirming that the Player 22 did not in fact participate in the Coca Cola Tournament and that all of the pictures of the Player 22 on the website were actually taken at the Juanito Tournament.
71. Against the above background, the Sole Arbitrator is not satisfied that Real Madrid can be reproached to have let participate Players 22 and 23 at events of Organised football.
72. FIFA also argues that the fact that the Players "*remained on a continuous basis whilst being tied to the Club... constituted a first registration within the meaning of [Article 19.3 RSTP]*". The Sole Arbitrator disagrees. Such a concept of a registration "*de facto*" is not sustained by the current rules. Further, FIFA was not able to provide reliable evidence that such kind of registration *de facto* has been, first, admitted under circumstances similar to those of the present case and, second, consistently applied by the FIFA bodies and/or by CAS. If FIFA came to consider appropriate to put limits on the period of trial that a club can ask or offer a young player to do, a respective rule would have to be issued. To be clear, the Sole Arbitrator understands the policy reasons that are invoked by FIFA. However, based on the evidence submitted, the Sole Arbitrator is not satisfied that the time passed by Players 22 and 23 with Real Madrid in try-outs/trainings and their participation in certain tournaments that were not part of Organised football can be considered a violation of Article 19 RSTP.
73. In light of the foregoing, the Sole Arbitrator holds that Real Madrid did not violate Article 19.3, 19.4 or Annexes 2 and 3 RSTP in relation to Players 22 and 23 for that offense.

VII.3 *On the license "in deposit" for Player 38 and provisional authorizations for Player 39*

74. As previously mentioned, Articles 19.1 and 19.3 RSTP impose a ban on the international transfers of minors and first registration of non-national minors except where the move of the concerned player falls under an exception of Article 19.2 RSTP (see *supra* at para. 50 and 51). Article 19.4 RSTP, as well as Annexes 2 and 3, stipulate that the application for such registrations must be done through the TMS and requires the FIFA Subcommittee's approval (see *supra* at para. 62). Finally, Article 9.1 RSTP establishes that "*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.*"

75. The Appealed Decision upheld violations of Articles 9.1, 19.1, and 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 38, and Articles 19.3 and 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 39.
76. Real Madrid does not contest that the FIFA Subcommittee's approval is necessary for the issuance of an ITC or a first registration of a minor. However, Real Madrid contests having violated the aforementioned articles of the RSTP since (i) Player 38 did not take part in Organised football for Real Madrid before obtaining the FIFA Subcommittee's approval and the ITC, and (ii) Player 39 had temporary and provisional authorization from the FFM to play for Real Madrid in consideration of the fact that his situation fell patently within the 5-year residency exception (see *supra* at para. 36(c)). FIFA, on the other hand, maintains that before registering and/or including a player between the ages of 12-17 (now 10-17) with a new club, the FIFA Subcommittee must give its approval and the ITC must be obtained, failing which a violation of Article 19 RSTP occurs (see *supra* at para. 38(c)). The Sole Arbitrator concurs with FIFA, for the following reasons.
77. To start with, there is simply no rule in the RSTP that grants the possibility to a club to place a license "in deposit" ("*en deposito*"). In fact, allowing this would make possible all sort of abuses; clubs could try to secure players or to bypass limitations of transfer windows, also, such a "deposit" could jeopardize contract stability. Further, no rule exists in the RSTP granting the right to a club to obtain a provisional regional authorization, anticipating and replacing the authorization of the competent body.
78. The Sole Arbitrator further notes that Articles 19.1, 19.3 and 19.4 RSTP, together with Annexes 2 and 3 RSTP, establish that (i) *before* an international transfer of a minor can occur, the FIFA Subcommittee's approval and the ITC must be obtained, and (ii) *before* a first registration of a non-national minor, the FIFA Subcommittee's approval must be obtained. Indeed, Article 19.4 RSTP explicitly requires that the FIFA Subcommittee's approval be obtained "*prior to*" the request for the ITC and/or first registration (see *supra* at para. 62). Similarly, Article 9.1 RSTP stipulates that an association may only register an international transfer "*once*" it receives the ITC.
79. In other words, nowhere in the RSTP is there an exception to the strict and mandatory requirements set out in Articles 19.4 and 9.1 RSTP. That being the case, the Sole Arbitrator is of the view that placing a license "in deposit" with, or obtaining provisional authorization from, a regional or national association, while awaiting the FIFA Subcommittee's approval or the ITC, is not in line with the applicable FIFA rules. Simply put – the steps of the registration process laid out in Articles 19.4 and 9.1 RSTP cannot be skipped or circumvented with mechanisms not foreseen in the RSTP. Therefore, it is totally irrelevant (i) whether or not a club is certain that, based on the player's situation, the FIFA Subcommittee will eventually approve a minor's international transfer or his first registration, or (ii) whether such approval is actually later obtained, or (iii) whether the player refrained from playing Organised football during the interim – as it happened in the present case in connection with Players 38 and 39, respectively. Based on the current regulatory regime, a future, positive expectation does not relieve a club to obtain in advance the necessary authorizations.
80. Consequently, the Sole Arbitrator confirms that Real Madrid violated Articles 9.1, 19.1, and 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 38,

since that Player was transferred to, and then registered (albeit “in deposit”) with, Real Madrid before obtaining the FIFA Subcommittee’s approval and the ITC from his previous association. Likewise, the Sole Arbitrator also confirms that Real Madrid violated Articles 19.3 and 19.4 RSTP, together with Annexes 2 and 3 RSTP, in relation to Player 39, since it registered him (albeit provisionally) without first obtaining the FIFA Subcommittee’s approval.

VII.4 On Article 5.1 RSTP

81. Article 5.1 RSTP provides that “*A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2. Only registered players are eligible to participate in organised football...*”
82. In the Appealed Decision, the FIFA AC confirmed that Real Madrid violated Article 5.1 RSTP in 33 cases (Players 1, 3-14, 16-24, 31, 37, 39, 56, 57, 58, 59, 61, 63, 68, 70).
83. Real Madrid does not consider it violated Article 5.1 RSTP because, as required by the Spanish legal framework, it registered the mentioned Players with the competent association, the FFM, and they were subsequently registered at the RFEF (see *supra* at para. 36(d)). FIFA argues that Real Madrid did violate that provision because it did not provide sufficient proof to establish that it registered the Players at the “association” referred to in Article 5.1 RSTP, meaning the national association, the RFEF; registration with the FFM is, in FIFA’s view, insufficient to satisfy Article 5.1 RSTP as that body is not a FIFA member and is not recognized by FIFA (see *supra* at para. 38(d)).
84. In light of the Parties’ dispute, the Sole Arbitrator must evaluate whether Real Madrid violated Article 5.1 RSTP in relation to the above-mentioned 33 Players.
85. The Sole Arbitrator agrees with FIFA that the term “association” in Article 5.1 RSTP refers to national associations that are members of FIFA, *i.e.* here the RFEF. The definition of association found in the FIFA Statutes is “*a football association recognised by FIFA. It is a member of FIFA, unless a different meaning is evident from the context*”. The FFM, however, is a regional association within the Spanish sports structure and is not a member of FIFA. That being the case, it cannot be considered as the “association” under Article 5.1 RSTP.
86. Nevertheless, the Sole Arbitrator finds that 31 players – Players 1, 3-14, 16-21, 24, 31, 37, 39, 56, 57, 58, 59, 61, 63, 68, 70 – were in fact registered at the RFEF as required by Article 5.1 RSTP.
87. According to the registration system in Spain, a club wishing to register a minor participating only in regional competitions must do so at the relevant regional association, in this case the FFM. Upon registering the player that regional association immediately communicates the registration to the RFEF, that then, in turn, registers the player as well. This applies, at least, for the FFM. Already at this stage it shall be mentioned, to avoid any misunderstanding in comparing the present case to other Spanish cases, that not all Spanish regional associations notify – or notified – immediately all players to the RFEF, for their registration.
88. The above factual basis has been explicitly confirmed by Mr. Kepa Larumbe, both at the hearing, in his testimony, as well as in his witness statement that, in the relevant part, reads as follows:

“Para aquellos jugadores que por edad y categoría han de participar en competiciones de ámbito territorial madrileño, es la Federación de Fútbol de Madrid la que debe tramitar sus licencias (de acuerdo con la competencia exclusiva en materia deportiva, de que goza la Comunidad Autónoma de Madrid), dando luego inmediata comunicación de las inscripciones a la RFEF, que igualmente inscribe a los jugadores”.

Unofficial translation into English:

“For those players who due to their age and category participate in competitions in the Madrid area, it is the Football Federation of Madrid that must issue their licenses (in accordance with the exclusive competence in sports which the Autonomous Community of Madrid holds), who then immediately communicates the registrations to the RFEF, which shall likewise register the players”.

89. The FFM has also confirmed the above described registration process in a letter of 8 April 2015 to Real Madrid:

“[...] en efecto esta Real Federación de Fútbol de Madrid da traslado a la Real Federación Española de Fútbol de todas las inscripciones que se producen en la misma durante la temporada de jugadores tanto españoles como extranjeros. Tal comunicación se lleva a cabo mediante soporte informático a través de ficheros telemáticos entre ambas Federaciones. Es además una obligación reglamentaria efectuar dicha comunicación de ficheros, pues las licencias expedidas por esta territorial tienen carácter provisional y es la Real Federación Española quien confirma y da carácter definitivo a las mismas, sin que hasta la fecha conste objeción reglamentaria de ningún tipo acerca de las mismas”.

Unofficial translation into English:

“[...] in effect this Football Federation of Madrid communicates to the Spanish Football Federation all of the registrations of both Spanish and foreign players that it carries out during the season. Such communication is done through telematics means between the Federations. It is also a regulatory obligation to communicate said registrations, as the registrations issued by this community are provisional and it is the Spanish Football Federation that confirms them and makes them final, none of which, to date, have been subject to a regulatory objection of any kind”.

90. In terms of Article 5.1 RSTP, the relevant issue is *whether*, but not *how*, a player was registered at the RFEF, since the explicit requirement of the provision – *i.e.* that “[a] player must be registered at an association” – does not specify in what manner a registration must occur. In this regard, the Sole Arbitrator notes on one hand that it has been established that the above-mentioned 31 Players were all registered with the RFEF, as is documented in the list attached to the above-mentioned letter of FFM of 8 April 2015, which even indicated the specific date on which each of the Players 1-21, 24, 27, 31, 38, 39, 40, 58, 61, 63, 66, 68 and 70 have been registered with the RFEF. On the other hand, as also indicated in that list, Players 22 and 23 were never registered with the RFEF: Player 22 was “*no inscrito por ningún club esta Territorial*” and Player 23 was “*no inscrito rechazado autorización por FIFA*”.
91. In international football, the fact that a certain institution may act as “representative” for another member of the “football family” is a well-known

regulatory tool. FIFA itself applies such a tool in several sets of rules. So for instance the RSTP foresees that in connection with certain procedures, communications to clubs shall be made through the national member associations (cf. Article 9 Annexe 2 RSTP). In CAS 2014/A/3611, it was determined by CAS that a communication of FIFA to the RFEF but “for Real Madrid” was to be deemed validly notified to Real Madrid since the RFEF's role was the one of a legal representative: “[...] *one shall note that under Swiss law, it is possible that one person takes actions with legal effect for another person not only in legal transactions stricto sensu, but also in quasi-contractual relationship or quasi-legal transactions*” (CAS 2014/A/3611, N. 54, with ref.).

92. *Mutatis mutandis*, the same applies within the frame of the present case, in connection with the role of the FFM: the evidence submitted in these proceedings shows that – unlike the regional Catalan federation in the case CAS 2014/A/3793 – the FFM immediately and reliably passed all information regarding the players to the RFEF. For sure, on the basis of all evidence submitted, this is in view of the Sole Arbitrator the result of the evidentiary proceedings of the present case.
93. The Sole Arbitrator thus holds that Real Madrid did not violate Article 5.1 RSTP in relation to 33 players; the same applies in connection with the Players 22 and 23, that did not participate in Organised football events.

VII.5 On Article 19bis.1 RSTP

94. According to Article 19bis.1 RSTP, “*Clubs that operate an academy with legal, financial or de facto links to the club are obliged to report all minors who attend the academy to the association upon whose territory the academy operates.*” An academy is defined in point 12 of the RSTP Definitions as “*an organisation or an independent legal entity whose primary, long-term objective is to provide players with long-term training through the provision of the necessary training facilities and infrastructure. This shall primarily include, but not be limited to, football training centres, football camps, football schools, etc.*”
95. The FIFA AC, in the Appealed Decision, upheld a violation of Article 19bis.1 in 37 cases, *i.e.* in relation with Players 1-24, 27, 31, 37, 38, 39, 40, 58, 59, 61, 63, 66, 68 and 70.
96. It is Real Madrid’s position that the “Cantera” is not an academy as defined in Article 19bis.1 RSTP, and that, even if it were, the club satisfied its obligation to report all minors since the FFM and RFEF were fully aware of the presence of all minors at the Cantera as they all held a federative license (see *supra* at para. 36(e)). FIFA believes that the Cantera is an academy and that the reporting of minors under Article 19bis.1 RSTP is an additional, separate and independent obligation to that of registering a player with the RFEF under Article 5.1 and 19.4 RSTP (see *supra* at para. 38(e)).
97. The Sole Arbitrator must therefore determine (i) whether the Cantera constitutes an academy under the definition of the RSTP, and, if so, (ii) whether Real Madrid complied with its obligation under Article 19bis.1 RSTP to report to the RFEF all minors who attend it.
98. The Sole Arbitrator comes to the conclusion that the Cantera is an academy of Real Madrid. The Sole Arbitrator bases its finding on the facts that: (i) it has its own sporting facilities, health care staff, and residence and is, thus, an “organization” under the RSTP’s definition of an academy (in this regard, the Sole Arbitrator notes

that there is no specification that an organization must be independent and/or external to qualify as an academy); (ii) its primary purpose is in fact to provide young football players with long-term training; and (iii) Real Madrid itself refers to it as an academy on its official website and promotional videos.

99. Having established that Real Madrid operates an academy, and since it is undisputed that such academy has a legal, financial or *de facto* link to the club, the Sole Arbitrator must then decide whether Real Madrid complied with its obligation under Article 19bis.1 RSTP to report to the RFEF all minors who attend it.
100. On this issue, the Sole Arbitrator shares the view of the CAS panel in the case CAS 2014/A/3793: reporting shall be considered as a further and different obligation to registering a player, in particular in order to protect those minors that train and/or play with an academy, but are not registered. As stated by the panel in the case CAS 2014/A/3793:

“The obligation imposed by Art. 19-bis RSTP on clubs to report minors attending an academy to the relevant association is a further, and different, obligation than the one concerning the registration of the players. In other words, it cannot be considered, as the Appellant submits, that by registering a player a club would automatically comply also with the obligation to “report” players who are attending its academy. This is so because of the rationale behind Art. 19-bis RSTP, which is based on the consideration that a distinction should be made between under-aged players who are registered with the club but do not attend an academy, and under-aged players not only registered with the club but also attending its academy and, most important, under-aged players who are not registered with the club but still train and play in the academy. This distinction is based on the consideration and the understanding that minors move from one country to another, and join academies where they may stay for several years until they reach the age of 18 (when they will be formally registered for the first time), without registering with associations. Furthermore, players attending an academy may need additional supervision and protection by the competent authorities, in order to ascertain that their interests are not jeopardized. It is highly likely that players attending an academy are no longer living with their families but are hosted and educated at the premises of the academy and might require additional attention. Art. 19-bis RSTP requires thus, additional information regarding the attendance of the academy regardless of the question whether players have been registered with the relevant association or not. Neither the information provided when carrying out an international transfer pursuant to Art. 19 RSTP, nor the simple registration of the player with an association may suffice. This is so, since a player who is transferred to a foreign club, or registered with an association does not necessarily attend an academy. Even more so, in case a player moves to an academy abroad and is not registered at all with the relevant association” (CAS 2014/A/3793, para. 9.17).

101. It is true that Article 19bis.1 RSTP does not specify in what manner a club must “report” minors. However, Real Madrid was unable to submit reliable evidence to support its line of reasoning that the club fulfilled the reporting obligations in connection with all players. In particular, the registration with FFM cannot be considered as sufficient, for the reasons set out above.

102. As a result, Real Madrid did violate Article 19bis.1 RSTP in relation to 37 players – Players 1-24, 27, 31, 37, 38, 39, 40, 58, 59, 61, 63, 66, 68 and 70 – as all of those players were not reported within the meaning of Article 19bis.1 RSTP.

VII.6 Sanction

103. According to Articles 10 and 12 of the FIFA Disciplinary Code (the “FIFA DC”), the following sanctions may be imposed on Real Madrid, as a legal person: a warning, a reprimand, a fine, a return of awards, a transfer ban, playing a match without spectators, playing a match on neutral territory, ban on playing in a particular stadium, annulment of the result of a match, expulsion, forfeit, deduction of points, and relegation to a lower division. With regard to a fine, per Article 15 FIFA DC, it cannot be less than CHF 300 but cannot exceed CHF 1,000,000: *“The fine shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000”*.
104. When there are concurrent infringements, Article 41 FIFA DC calls for the sanction and/or fine to be based on the most serious offence committed and then to be increased, if appropriate, depending on the circumstances: *“1. If several fines are pronounced against someone as a result of one or more infringements, the relevant body bases the fine on the most serious offence committed and, depending on the circumstances, may increase the sanction by up to fifty per cent of the maximum sanction specified for that offence. 2. The same applies if a person incurs several time sanctions of a similar type (two or more match suspensions, two or more stadium bans etc.) as the result of one or several infringements.”*
105. In assessing the appropriate sanction, Article 39.4 FIFA DC requires that account be taken *“of all relevant factors in the case and the degree of the offender’s guilt.”*
106. The FIFA Disciplinary Committee determined that Real Madrid violated either Articles 19.1 or 19.3 in 8 cases, Article 19.4 RSTP, together with Annexes 2 and 3 RSTP, in 4 cases, Article 9.1 RSTP in one case, Article 5.1 RSTP in 33 cases and Article 19bis.1 RSTP in 37 cases (see *supra* at para. 13). Given the concurrent infringements, the FIFA Disciplinary Committee, in accordance with Article 41 FIFA DC, based its sanction on the most serious offense, that is, Article 19.1 and 19.3 RSTP, which deals with the protection of minors. It elected to apply a transfer ban of two entire and consecutive registration periods and a fine of CHF 270,000 for those sanctions, and then to increase that fine on the basis of Article 41 FIFA DC by CHF 90,000 (*i.e.* to a total amount of CHF 360,000) for Real Madrid’s violations of Articles 5.1, 19bis.1 and Articles 19.4 RSTP, together with Annexes 2 and 3 RSTP. The FIFA AC confirmed the sanction.
107. The Sole Arbitrator, however, has found that Real Madrid committed less infractions than it had been ruled by the FIFA bodies, and, on the basis of the information disclosed in the CAS Award, less infractions than the FCB committed in CAS 2014/A/3793.
108. Accordingly, the Sole Arbitrator considers it appropriate to reduce the sanction originally imposed on Real Madrid by FIFA.
109. The most serious offense committed and the reason the FIFA Disciplinary Committee imposed (and the FIFA AC confirmed) a sanction of two transfer bans and a fine of CHF 270,000 were the violations of the protection of minors, that is, of Article 19.1 and 19.3 RSTP. Considering that Real Madrid committed 2 of those violations (down from 8), the Sole Arbitrator finds it appropriate to reduce the

sanctions imposed on the club to one transfer ban and to a total fine in the amount of CHF 240,000. This is, in view of all circumstances, and also comparing with sanctions imposed on other CAS cases, for the Sole Arbitrator the sole proportionate sanction to be imposed.

110. Any lesser sanction for Real Madrid's violations of the RSTP would be inappropriate. The Sole Arbitrator recognizes the importance of the protection of minors in football and that by violating the rules, Real Madrid went against that fundamental interest. Furthermore, the Sole Arbitrator considers that Real Madrid, in registering Players 38 and 39 through circumventing mechanisms not foreseen in the RSTP, acted in an unacceptable manner that must be met with a sanction severe enough to dissuade the club from committing the same offenses again. According to the FIFA DC, the likelihood that a party may repeat a rules violation is not an element to be considered in advance when determining the sanction. Insofar, a repeat offender may be sanctioned more severely when the second offence will be evaluated, and not in advance on the basis of the level of insight shown.
111. To conclude, Real Madrid is banned from registering any new players, either nationally or internationally, for a single registration period and must pay a fine to FIFA of CHF 240,000. The Sole Arbitrator also confirms the reprimand against the club. Further, Sec. 3 of the decision rendered by the FIFA Appeal Committee on 8 April 2016 and Sec. 7 of the decision rendered by the FIFA Disciplinary Committee on 23 July 2015 are confirmed.
112. All other requests of the Parties are rejected.

VIII. COSTS

113. In accordance with Article R65.1 and 2 of the Code, since the present appeal is against a disciplinary decision of an international sports-body, the proceeding is free of charge, except for the Court Office Fee, which Appellant already paid and shall be retained by the CAS.
114. (...).
115. (...).

DECISION

The Court of Arbitration for Sport rules that:

1. The appeal filed on 27 September 2016 by Real Madrid Club de Fútbol against the decision rendered by the FIFA Appeal Committee on 8 April 2016 is partially upheld.
2. The decision rendered by the FIFA Appeal Committee on 8 April 2016 is set aside and is replaced by the present arbitral award as follows:
 - Real Madrid Club de Fútbol shall be banned from registering any new players, either nationally or internationally, for one (1) entire registration period following the notification of the present operative part of the arbitral award;
 - Real Madrid Club de Fútbol is ordered to pay a fine to FIFA of the amount of CHF 240,000 (two hundred forty thousand Swiss Francs), payable within 30 days after receipt of the present arbitral award;
 - A reprimand is imposed on Real Madrid Club de Fútbol;
 - Sec. 3 of the decision rendered by the FIFA Appeal Committee on 8 April 2016 and Sec. 7 of the decision rendered by the FIFA Disciplinary Committee on 23 July 2015 are confirmed.
3. The present arbitral award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Real Madrid Club de Fútbol, which is retained by the CAS.
4. (...).
5. All other motions or prayers for relief are dismissed.

Lausanne, 3 May 2017

(Operative part notified on 20 December 2016)

THE COURT OF ARBITRATION FOR SPORT



Michele A.R. Bernasconi
Sole Arbitrator