Arbitration CAS 2021/A/7807 Sport Lisboa e Benfica v. Fédération Internationale de Football Association (FIFA), award of 28 September 2021

Panel: Mr Patrick Grandjean (Switzerland), Sole Arbitrator

Football
International transfer of minor players
Admissibility of new evidence
Res judicata
Burden of proof regarding the application of the exception of article 19.2(a) RSTP
Interpretation of the exception of Art. 19 para. 2 lit. a RSTP
Admissibility of an unwritten exception to the general prohibition of the international transfer of a minor
Compliance of Article 19 RSTP with mandatory principle of public policy and fundamental rights

1. **A witness called to testify in the appeal brief that could not be cross-examined upon his witness statement at the hearing, must be regarded as new evidence filed after the submission of the appeal brief. Based on Article R56 of the CAS Code, absent any agreement of the opposing party in this respect or exceptional circumstances, new evidence must be excluded from the proceedings.**

2. **The principle of *res judicata* only applies to arbitral awards and court decisions. The types of decisions that enjoy *res judicata* effects are defined by law. It is not within the parties' autonomy to extend the number or types of decisions that are vested with *res judicata* effect. If it were otherwise, a violation of the *res judicata* principle could not constitute a violation of the ordre public. There is no provision in Swiss law that confers *res judicata* effects to decisions of association tribunals. Decisions of a judicial body of a sport federation, which are not arbitral tribunals, are mere embodiments of the will of the federations concerned.**

3. **A club relying on the exception governed by Article 19 (2) lit. a) of the FIFA Regulations on the Status and Transfer of Players (RSTP) in order to be authorised to register a minor player carries the burden of proof to demonstrate that football is not the reason, or one of the reasons, for the move of the player's parents. Hence, it is for the club to establish the true intention and motivation of the player's parents.**

4. **The wording of Article 19 (2) lit. a) RSTP is clear and unambiguous. According to this provision, there are two decisive factors for the exception to come into play: a) the player's parents must move *"to the country in which the new club is located"* and b) the reason for which the player's parents decided to move is not football-related. Considering that the purpose of Article 19 RSTP is the protection of minors, any deviation from this provision should only be considered in the most extraordinary circumstances. When the move of the family is motivated by a mixture of several**

reasons, and where each one of the other proven reasons is legitimate *per se*, the application of the exception will be assessed and decided based on the weight of the "football factor" within the whole range of reasons and the overall circumstances of the matter, such as: what were the other reasons? Whether all the family moved? To what extent the specific location to which the family decided to move was chosen with due consideration of the football activity of the minor, etc. If, in view of the circumstances, it appears that the football factor is predominant, the requirements of Article 19(2) lit. a) RSTP are not met.

5. **Article 19 (2) lit, a) RSTP does not offer a way to rectify the situation when the move of the player's parents that was predominantly motivated by football reasons resulted in a refusal of the player's transfer. As drafted, Article 19 (2) lit. a) RSTP sets a clear standard which would apply uniformly, equally and in a predictable fashion. The question arises then, whether there is some unwritten exception to the general prohibition of the international transfer of minors. On several occasions, FIFA has accepted that the jurisprudence of the Sub-Committee of the Players' Status Committee has granted the international transfer of minors on the basis of an exception not listed under Article 19 (2) RSTP. Considering that the purpose of Article 19 RSTP is the protection of minors, which constituted one of the principles included in the agreement that was concluded between FIFA, UEFA and the European Commission in March 2001, any deviation from this provision should only be considered in the most extraordinary circumstances.**

6. **FIFA rules limiting the international transfer of minor players do not violate any mandatory principle of public policy and do not constitute any restriction to the fundamental rights that would have to be considered as not admissible. In particular, the prohibition contained in Article 19 RSTP does not contravene any provision, principle or rule of the European Community.**

I. PARTIES

1. Sport Lisboa e Benfica is a football club with its registered office in Lisbon, Portugal ("SL Benfica"). It is a member of the Federação Portuguesa de Futebol ("FPF"), itself affiliated with the Fédération Internationale de Football Association.

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

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in his award only to the submissions and evidence he deems necessary to explain his reasoning.

B. The relocation of the X. family

a) The Player's details

4. A. is a minor player of Swedish nationality, born on […] (the "Player").

5. In 2017, as he was 11 years old, the Player received some significant media coverage, which described him as a football prodigy in Sweden and a person of interest for clubs such as FC Barcelona and SL Benfica.

6. Until summer 2017, the Player was living with his family in Stockholm, in Sweden, where he had been registered with the football club Hammarby IF for 5 years.

7. In May 2017, the Player participated in a tournament with his club Hammarby IF and played against SL Benfica.

b) The relocation of the X. family from Sweden to Portugal

8. The Player has a sister, D. (born on 27 July 2004), and a brother, B. (born on […]).

9. The Player's father, C., broke his ankle in October 2016 and, from thereon, was diagnosed with Complex Regional Pain Syndrome (CRPS) and Behcet's disease, which caused him to suffer from ongoing symptoms with osteoporosis and eye inflammation. This is evidenced by a medical report, which covers a period between 5 and 27 January 2017 and which confirms the acute pain syndrome following the ankle fracture surgery.

10. According to a statement drafted by the Player's parents on 26 January 2021, in the beginning of 2017, the X. family had decided to live abroad for health reasons as a warmer climate would ease C.'s chronic pains. This is evidenced by:

- a medical certificate dated 14 April 2018, according to which *"C., born 1980-04-18, suffers from CRPS and Behcet's disease. (…). The patient feels that the warmer climate in Portugal eases his pains and he will seek further medical help in Portugal"*;

- a medical certificate dated 30 April 2018, which states that *"C. (…), suffers from Complex Reginal Pain Syndrome, CRPS, and Behcet's disease. CRPS is a form of chronic inflammatory/pain syndrome with autonomic dysreflexia that has evolved after his traumatic leg injury. Behcets's disease causes blood vessel inflammation with various manifestations. A warmer climate may ease his pains and other symptoms and it is advisable that he finds country with such a climate to live in"*.

11. In June 2017, the Player's family moved to Barcelona, Spain, but allegedly failed to adapt to this city and, therefore, decided to move to another country. The Player's parents hired M., a Portuguese lawyer, who was tasked to assist them with their relocation to Portugal (*i.e.* renting a property, incorporating a company, opening a bank account, etc.).

12. In November 2017, the Players' parents met M., who provided them with a list of real estate agencies as well as a choice of houses to rent.

13. According to a statement dated 17 April 2018 and issued by SL Benfica, the latter club had a first contact with the Player's father in November 2017. *"In this contact C. informed us that he was preparing to live with his family in Portugal, for personal and medical reasons, and asked if it would be possible for his son, A., to train and play in Benfica. C. explained us that A. was a young footballer in Sweden and he, [as] a father, would like to check with us, if his moving process to Portugal would happen A.'s football activity could continue but now in Lisbon. Since Benfica is well informed about the transfer of minor's rules, we explained C. that only after is complete process of moving from Sweden to Portugal, after being installed with a residence certificate, after his [son] being registered in a Portuguese Scholl, only after that, Benfica would start the legal procedures at the Portuguese FA and FIFA to apply to the [player's] transfer process"*.

14. On 10 January 2018, the Player's parents signed a lease agreement for a villa located in […], Portugal, which is, undisputedly, near the premises of SL Benfica (See the Bona Fide Declaration signed by the Player's parents on 23 January 2018). It was a fix-term contract for 12 months, renewable. According to this document, the monthly rent was of EUR 2,200 and the members of the X. family were still Swedish residents.

15. Simultaneously, the Player's parents signed the relevant forms to be registered in the Portuguese central taxpayer roll and, on 24 January 2018, certificates of residency, valid until January 2023, were delivered to each member of the Player's family.

16. According to the statement issued by SL Benfica, *"By the end of January 2018, C. confirmed us that the all family was already living in Portugal. Based on this information and on the documents C. showed to us, we started the administrative and legal procedures to apply for A. international transfer"*.

17. Since 2 February, 8 March and 1 September 2018, respectively, the Player, his brother and his sister attended school *"in Colégio […]"* at least until summer 2020.

18. In September 2018, C. found a job as *"a sales promoter in the company […] Lda"* and his wife worked in Colégio […], as a *"teacher of special needs children"*.

19. In January 2019, the Player's family moved to another home, also located in […], Portugal. As a matter of fact, the Player's parents had decided *"to rent a cheaper apartment"*.

20. In January 2020, the Player's parents set up the company *"[…] Lda"* in order to operate a restaurant, which opened its doors in September 2020 under the name *"Y."*.

21. In December 2020, the Player's family moved into its current home, which is 4 kilometres away from the restaurant.

C. The first application for the approval of the international transfer of the Player

22. On 23 March 2018, the FPF submitted on behalf of SL Benfica an application in the Transfer Matching System (TMS) for the approval of the FIFA sub-committee appointed by the Players' Status Committee prior to the request for the International Transfer Certificate (ITC) of the Player from the Svenska Fotbollförbundet (SVFF), based on the exception outlined in Article 19 (2) lit. a) of the Regulations on the Status and Transfer of Players (RSTP): *"Move of the player's parents for reasons not linked to football"* (the "First Application").

23. On 4 June 2018, the First Application was rejected by the Single Judge of the FIFA Players' Status Sub-Committee ("FIFA Single Judge") based on the following considerations:

> *"(…)*
>
> *10. The Single Judge was, however, keen to point out that, based on the documentation submitted, the alleged health reasons invoked for the move of the player's parents could not be undoubtedly established. Indeed, the medical certificate was issued and dated after FIFA's request for additional documentation. Secondly the Single Judge highlighted that, although the player's father's doctor stated that a "warmer climate may ease [the Player's father's] pains and other symptoms and it is advisable that he finds country with such a climate to live in" no explanation was provided as to the reasons leading the player's parents to specifically choose Portugal as their new country of residence, among other countries with "warm" climate.*
>
> *11. Furthermore, the Single Judge considered that the alleged reasons linked to the player's parents' possibility to start a business activity in Portugal were not supported by any documentation and were anyway not decisive in their decision making process related to their move. This, because at the time the player's parents moved, they were merely "considering proceeding with some corporate investments in Portugal, being at this moment analysing the possibility to proceed with the opening of a commercial establishment in Portugal – on the food market". (…)*
>
> *14. The Single Judge, however, emphasised that according to publicly available information, the Portuguese club appears to have been aware of the player's footballing skills since at least May 2017, when the player seems to have participated in a tournament with Hammarby IF and played against Benfica SL. The Single Judge highlighted that this event occurred 6 months before the player's parents allegedly took their decision to move to Portugal and 6 months prior to the alleged first contact as stated by the Portuguese club.*
>
> *15. (…) The Single Judge, however, considered that the circumstances in the matter at hand - the fact that the player participated in a tournament in May 2017 with his former club Hammarby IF and played against SL Benfica allowing the scouts of the Portuguese club to observe his abilities as a footballer, i.e. 6 months before the player's parents took their decision to move to Portugal, in connection to the fact*

that the alleged medical reasons for the player's parents' move to Portugal could not be established - created serious doubts as to whether the player's parents' move to Portugal was completely independent from the player's football career.

16. In continuation, the Single Judge considered that the fact that Benfica SL did apparently "not hesitate a moment" to recruit the player since it was apparently "aware of the situation of A. in Barcelona", i.e. FC Barcelona's decision to step back in the process to recruit the player, rather confirmed that the Portuguese club was fully aware of the player's skills and abilities before the player's parents took their decision to move to Portugal. (…)

18. (…) the Single Judge held that, based on the documentation submitted, and taking into account the timing of sequence of events in the matter at hand, it can at least not be excluded that the player's parents move to Portugal was influenced by the fact that the player was given the opportunity to join the professional Portuguese club. The Single Judge concluded that it rather appears that the player's potential registration with that club was the predominant reason for the player's parents move to Portugal".

24. The decision of the FIFA Single Judge was notified on 26 September 2018 and came into force as no appeal was lodged against it (the "First Decision of the FIFA Single Judge").

D. The second application for the approval of the international transfer of the Player

25. On 29 January 2021, the FPF submitted, on behalf of SL Benfica, a new application in the TMS for the approval of the sub-committee prior to the request for the ITC of the Player based on the exception provided for under Article 19 (2) lit. a) of the RSTP (the "Second Application"). In support of its application, the FPF claimed that the Player's parents moved to Portugal for reasons not related to the Player's football career, but for health and work-related reasons. It also filed a certain number of documents, namely a) a statement of the Player's parents, dated 26 January 2021, b) a residence certificate issued on 21 August 2020 confirming that the Player and his parents had been residing in […], Portugal since August 2019, c) a rental agreement for the property that the Player's family is currently living in, d) the father's and the mother's employment contracts related to the professional activities exercised as from September 2018 as sales promoter, respectively as teacher, e) a certificate confirming the constitution of a company by the Player's parents.

26. In a decision dated 4 February 2021, the FIFA Single Judge issued the following decision:

"The application of the Federaçao Portuguesa de Futebol (TMS reference D-0008140) on behalf of its affiliated club, SL Benfica, for the approval prior to the request for the International Transfer Certificate of the minor player, A. (Sweden), is not admissible".

27. The FIFA Single Judge took his decision based upon the following considerations:

- A decision had already been rendered on 4 June 2018 with regard to the First Application submitted by the FPF on behalf of the same club, concerning the same Player and pursuant to the same regulatory exception from the general prohibition of international transfers of minors; *i.e.* Article 19 (2) lit. a) RSTP. Under these circumstances, the FIFA Single Judge

concluded that the decision of 4 June 2018 was vested with a *res judicata* effect with regard to the Player's international transfer to SL Benfica. According to the FIFA Single Judge, *"the res judicata principle precludes a subsequent decision about the same object, among the same parties, relying on the same facts and based on the same cause of action. As such, the Single Judge concluded that if a matter (with res judicata) is brought again before the judge, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible"*.

- The applicable Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber do not offer the possibility to reconsider the First Decision of 4 June 2018 based on a new application. Furthermore, the FIFA Single Judge found that the FPF had no legal interest worthy of protection to submit a new application considering that the Player's situation had already been adjudicated upon in a final and binding manner.

- In any event, the documentation provided by the FPF in support of its Second Application did not entail a substantial change to the factual situation and, therefore, did not allow to depart from the decision taken with respect to the First Application. *"In fact, the newly issued statement from the Player's parents as well as the accompanying documents merely provide additional explanations as to the events having followed their relocation to Portugal, specially to corroborate the fact that they are "perfectly adapted and inserted into Portuguese society" (…) However, the Single Judge emphasised that the sequence and timing of events as well as the various elements raised in the first decision having led to the rejection of the first application remain unchanged"*. In particular, a) the medical certificates do not establish the existence of a medical justification for the relocation in Portugal as a result of C.'s health condition, b) the Player's parents started their professional activities only several months after they moved to Portugal and c) the Player had contacts with SL Benfica before he moved to Portugal. *"In other words, the Single Judge considered that the new application was merely based on the time spent by the Player's family in Portugal after their relocation, but does not entail a different appreciation of the case with regard to the reasons having led to said relocation"*.

28. On 4 February 2021, SL Benfica was notified of the decision issued by the FIFA Single Judge (the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 23 March 2021, SL Benfica lodged its Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). In its Statement of Appeal, SL Benfica requested that the procedure be referred to a sole arbitrator.

30. On 8 April 2021, FIFA informed the CAS Court Office that it agreed to refer the matter to a sole arbitrator, provided that he was appointed by the President of the CAS Appeals Division and was selected from the football list of CAS arbitrators.

31. On 13 April 2021, SL Benfica filed its Appeal Brief in accordance with Article R51 of the Code.

32. On 29 April 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had appointed Mr Patrick Grandjean, Attorney-at-law, Lausanne, Switzerland as sole arbitrator in accordance with Articles R52, R53 and R54 of the CAS Code.

33. On 28 May 2021, FIFA filed its Answer in accordance with Article R55 of the Code.

34. On 31 May 2021, whereas SL Benfica requested for a hearing to be held, FIFA asked to be allowed to communicate its position regarding the holding of a hearing after a decision was taken on its petition (filed in its Answer) for the production of the witness statement of Dr K., who was called by SL Benfica to testify before the CAS.

35. On 2 June 2021, the CAS Court Office sent the following instructions to the Parties:

> *"On behalf of the Sole Arbitrator, the Parties are requested to produce the following documents:*
>
> *SL Benfica*
>
> - *Bearing in mind that SL Benfica is requesting a hearing, it is requested to produce a witness statement upon which Dr K. will be heard.*
> - *to file the list of all the training camps that A. (the "Player") has attended in Spain and in Portugal, before and after his departure from Sweden until May 2021 as well as the proof of payment of these camps and the identity of the person(s) who paid for them.*
> - *to file the Player's football training schedule since his arrival in Portugal as well as all the information about a) the club(s) he trains with and b) the games in which he participated as well as the proof of payments related to these activities and the identity of the person(s) who paid for them.*
> - *To file all the written exchanges between SL Benfica and the Player's parents in the context of the first and second applications for the approval of the international transfer of the Player.*
>
> *FIFA*
>
> - *To file a translation into English of its exhibit 9: "Information publicly available at the time of First Decision"*
>
> *The Parties are invited to file the requested documents by* ***9 June 2021****.*
>
> *FIFA will then have until 11 June 2021, 14:00 pm (Swiss time) to state whether it prefers for a hearing to be held.*
>
> *Should a hearing be held, the Parties are invited to reserve 21 and 30 June 2021 and indicate which of these 2 dates are more convenient for them by* ***11 June 2021, 14:00 pm (Swiss time)****".*

36. On 9 June 2021, FIFA filed the English translation of its exhibit 9 to its Answer, which consists of numerous press articles published on several news websites and commenting the Player's outstanding skills for football as well as his move from Sweden to Spain and Portugal in order

to be registered with FC Barcelona and SL Benfica. According to several articles, a deal had already been secured between the Player and SL Benfica.

37. On 16 June 2021, within the extended deadline granted by the CAS Court Office, SL Benfica claimed that it never had any written exchanges with the Player's parents. Furthermore, it filed:

- The following list of the training camps attended by the Player in Spain and Portugal, before and after his departure from Sweden until May 2021:

> *"(…)*
>
> - *Santa Cugat FC, Spain, since September to December 2017;*
> - *SL Benfica, Portugal, since February to June 2018;*
> - *Amora FC, Portugal, since November to December 2018;*
> - *Sporting Clube de Portugal, Portugal, since January to March 2019;*
> - *SL Benfica, Portugal, since April 2019 until the current date, (…)".*

In an undocumented manner, it is claimed that *"All the payments related with such activity were made by Player's parents".*

- The detail of the *"Sport Lisboa e Benfica Football School program"* attended by the Player during the 2018/2019 season until the 2020/2021 season.

- The Player's football training schedule since his arrival in Portugal as well as all the information about the club(s) he trained with and the games in which he participated. According to this document and between 1 and 24 June 2018, the Player participated in three tournaments with SL Benfica and has not played in any game since then.

38. On 21 June 2021, within the extended deadline granted by the CAS Court Office, SL Benfica filed Dr K.'s witness statement.

39. On 23 June 2021, FIFA confirmed that it preferred for the matter to be decided solely on the basis of the written submissions or suggested that *"In lieu of a hearing, FIFA considers that a second round of submissions might be desirable, however, solely in order to provide comments on the above-mentioned documents produced by the Appellant".*

40. On 23 June 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing, which was eventually scheduled for 30 June 2021, with the agreement of the Parties.

41. On 24 June 2021, the CAS Court office sent to the Parties the Order of Procedure which was returned duly signed by FIFA on 25 June 2021 and by SL Benfica on 28 June 2021.

42. The hearing was held on 30 June 2021, via video-conference.

43. In addition to the Sole Arbitrator and Mr Antonio De Quesada, CAS Head of Arbitration, the following persons attended the hearing:

For SL Benfica:

1) Mr Bruno Silva Alves, Counsel

For FIFA:

1) Mr Jaime Cambreleng Contreras, Head of FIFA Litigation Department;

2) Mr Saverio Paolo Spera, Senior Legal Counsel.

44. The Sole Arbitrator heard evidence from the following persons, called by SL Benfica:

- C., the Player's father;
- D., the Player's sister;
- the Player;
- […], a teacher at the *Colégio […]*;
- […], a waitress at the Y.

45. All the witnesses were heard via video-conference and invited by the Sole Arbitrator to tell the truth subject to the consequences provided by the law. They were examined and cross-examined by the Parties and questioned by the Sole Arbitrator. Relevant parts of their testimony include that:

- The X. family had always lived in Stockholm, where the parents got married and the children grew up. The family used to travel a lot and, for many years, had planned to move abroad, in a place where the climate was warmer than in Sweden.

- C. fell sick in 2009 and was diagnosed with some kind of medical condition in 2013. When he broke his ankle in 2016, the whole family agreed that it was the right time to fulfil its dream of living in another country. C. sold his belongings, among which a couple of restaurants, which provided a certain financial comfort enabling the family to live each day without worries. In this respect, C. explained that between January and September 2018, his wife and himself travelled around, enjoying themselves and looking for business opportunities.

- The X. family first chose to move to Barcelona as they knew the city very well. It was not too far for the relatives to come visit and with a lot of business opportunities. They stayed in an Airbnb for the first three weeks and realised quickly that it was complicated to start

a business in this part of Spain due to excessive bureaucracy and the need to speak Catalan. In addition, D. had a very hard time to adjust and did not like it there at all. Hence, in September 2017, the X. family decided to visit Portugal.

- Portugal has many benefits in comparison with Barcelona as it has a large Swedish community, very little bureaucracy and the cost of living is low. In addition, it is a good place to open a […] restaurant as Portugal is not familiar with that kind of fast-food. The Y. is doing so well, that C. is about to open two more units and one food court soon.

- The X. family is well-adapted to Portugal and none of its members considers the possibility of returning to Sweden. The children are perfectly integrated as they attend the local schools, have friends there and speak the national language. The family lives in a house with a swimming pool, near the beach and is in the process of building its own home.

- According to C., the choice of Portugal was the result of a decision taken by the whole family and was absolutely not related to the Player, who is just one of the three X. children and who was just 11 years old at the time of the relocation.

- The Player suffers from his prohibition to play games. He feels discriminated and the whole situation saddens him so much that he cries frequently.

- The Player testified that he liked Barcelona but, since his sister was miserable there, he accepted to move to Portugal. He confirmed that he had the potential to be a professional football player.

- The Y. opened its doors on 15 September 2020 and suffered from the COVID-19 pandemic. In the beginning of 2021, it could only serve take away food. At the time of the hearing before the CAS, the restaurant was open again and got a lot of business. It has a seating capacity of 30 persons inside and 70 outside. C. works there as a chef on a daily basis and so is his wife in the capacity of manager.

- According to C., the media articles about his son and his alleged negotiations with FC Barcelona and SL Benfica were fabricated stories without any foundation. He could not explain where this fake news came from and, in particular, he contested that a deal had been secured with SL Benfica.

46. At the outset of the hearing, the Parties confirmed that they had no objection as to the appointment of the Sole Arbitrator.

47. After the Parties' final arguments, the Sole Arbitrator closed the hearing and announced that his award would be rendered in due course. At the conclusion of the hearing, the Parties accepted that their right to be heard in the present proceeding had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. SL Benfica

48. In its Appeal Brief, SL Benfica submitted the following requests for relief:

> *"The relief sought on the Appeal is, pursuant to R57:*
>
> *1.To set aside the Appealed Decision dated 4 February 2021 rendered by the Single Judge of the FIFA Player's Status Sub-committee;*
>
> *2.[To] render of a new decision admitting the application submitted on behalf of [SL Benfica] and approving the international transfer of the Player A. to [SL Benfica];*
>
> *3.To order [FIFA] to pay the costs of the Arbitration Proceedings;*
>
> *4.Given that [SL Benfica] was assisted in the present procedure by professional legal advisers, to order [FIFA] to contribute towards their costs".*

49. The submissions of SL Benfica, in essence, may be summarized as follows:

- The Principle of *res judicata* cannot apply to decisions issued by an administrative body of a sport federation such as the FIFA Single Judge. Moreover, such a decision cannot be enforced by any court.

- The procedure described in Annex 2 to the RSTP (procedure governing applications for first registration and international transfer of minors – article 19 paragraph 4) does not have the nature of a legal or even arbitral procedure. It does not implement basic principles such as the right to be heard or the respect of equal treatment.

- In any event, the *res judicata* principle cannot apply in the present matter as the First Decision of the FIFA Single Judge and the Appealed Decision are not based on the same grounds. As a matter of fact, the Second Application is supported by new facts and circumstances, which evidence that the requirements of Article 19 (2) lit. a) RSTP are met. The following facts occurred after the First Decision of the FIFA Single Judge was rendered: a) The Player and his family are in Portugal since 2018, *i.e.* for almost three years and a half; b) since March 2018, the Player and his siblings follow classes in a Portuguese School, c) since September 2018, the Player's Parents work for Portuguese companies and d) in January 2020, the Player's parents set up a company in order to open a successful restaurant in September 2020. Since the relocation in Portugal, C. feels much less pain in his left foot and the X. family *"created new social, friendly, business and scholar relations being fully integrated in the Portuguese community"*.

- The new documentation and new facts supporting the Second Application *"allow to conclude without any doubt that the player's parents moved to Portugal for reasons not linked to football"*. The Player's parents moved to Portugal because of C.'s condition and also because they wanted to open a restaurant and considered that Portugal was the ideal country to

complete this project. It is important to stress that when the X. family moved to Portugal, the Player was only 11 years old.

- In June 2017, the Player's parents decided to move to Barcelona, Spain, a city with a warm climate and with a lot of business opportunities for foreigners. *"However, after a period of living in Barcelona, the parents realized that it would be awfully expensive to open a restaurant there. (…) Beyond these circumstances, the Player's parents did not find any accommodation they liked, (the apartments they liked were not affordable)"*. So, they chose to move to Portugal, which is a safe country, with a mild climate and a lower cost of living than Spain.

- *"If the reasons were linked to football certainly after the rejection of the first application (…) the Player's family would not continue living in Portugal and certainly more than two years after they would not decide to open a restaurant"* and the Player's parents would not have deprived their son of his right to play in official matches for more than three years.

- *"Preventing children from playing sports collides with several European and even international rules"*, *i.e.*:

    - Article 31 of the United Nations Convention on the Rights of the Child, which *"recognizes the right of children to participate in games and recreational activities of their age"*.

    - Article 24 (1) of the Charter of Fundamental Rights of The European Union, according to which *"Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity"*.

    - *"The same rule is provided in the article 12. of the United Nations Convention on the Rights of Child"*.

      "The application of such rule requires the child to be heard about matters as sensitive as this one that prevents a 14-year-old child from practicing the sporting activity he likes so much. (…) In accordance with such rule [SL Benfica] expressly requires the audition of the Player to express his position about this matter and in particular his willingness to play football".

    - *"Moreover, under article 3. of the United Nations Convention on the Rights of Child and paragraph 2 of article 24., of the Charter: "In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration"*.

- The Second Application was filed because of the Player's sadness due to the fact that he has been prevented from playing in official matches for more than three years. The confirmation of the Appealed Decision would infringe the Player's superior interest, *i.e. "his happiness and personal fulfillement"* and would *"violate the article 45. of the mentioned Charter of Fundamental Rights of The European Union because there is no reason to violate player's rights in the country that his parents chose to live"*.

B. FIFA

50. In its Answer, FIFA submitted the following requests for relief:

> *"Based on the foregoing, FIFA respectfully requests CAS to issue an award on the merits:*
>
> *(a) rejecting the reliefs sought by the Appellant in their entirety;*
>
> *(b) confirming the Appealed Decision;*
>
> *(c) ordering the Appellant to bear the full costs of these arbitration proceedings;*
>
> *(d) ordering the Appellant to make a contribution to FIFA's legal costs".*

51. The submissions of FIFA, in essence, may be summarized as follows:

- SL Benfica is right when it claims that the procedure before the FIFA Players' Status Sub-Committee pursuant to Article 19 (2) lit. a) RSTP cannot be qualified as an arbitration procedure. However, and contrary to SL Benfica's position, the relevant procedure is respectful of the national associations' right to be heard as they have *"(i) the right to present their views on the essential facts; (ii) the right to produce evidence in support and (iii) access to the file. Most of the times, the associations are invited to complete the file with further evidence in order for the deciding body to analyse a complete application, as was the case for example, in the proceedings leading to the First Decision.* (…) *In casu, the FPF was given all the opportunities to provide all the documentation (on behalf of Benfica) in support of the claim that the Parents' move to Portugal was completely unrelated to football. Therefore, and bearing in mind the nature of these types of proceedings, FIFA considers that the FPF's (or, by extension, Benfica's) right to be heard was not violated".*

- The Second Application is barred by *res judicata* and is therefore inadmissible as it (a) involves the same Parties, (b) has the same object and (c) has the same legal basis as the First Application, which has been the subject of a final and binding decision, issued on 4 June 2018.

- If the decision of the FIFA Single-Judge could not be vested with *res judicata* effect simply because, as alleged by SL Benfica, *"it is not judicial in nature and cannot be enforced by any court"*, the entire system in terms of legal certainty and procedural efficiency would be compromised. *"This would essentially mean entitling any national federation whose affiliate club is not satisfied with the findings of a ruling of the Sub-Committee concerning the registration of the desired minor player to lodge the very same application repeatedly"* (emphasis added by FIFA). *"Moreover, if this were the case, there would be no reason to have these decisions appealable at the CAS in the first place and the very existence of Article R49 CAS Code would be meaningless".*

- In addition, SL Benfica's position regarding the absence of *res judicata* effect of the decision of 4 June 2018, is inconsistent with the jurisprudence of the CAS as well as of the Swiss Tribunal Federal ("SFT").

- Contrary to SL Benfica's assertion, the legal and factual situation between the First and Second Applications has not changed to such an extent that a re-examination of the case could lead to a different outcome:

  - The new documents filed in support of the Second Application only establish that the X. family chose to stay in Portugal notwithstanding the rejection of the First Application to register the Player with SL Benfica. *"Any decision of the Parents about whether to remain or not in Portugal after a negative ruling of the Sub-Committee is irrelevant to establish whether their choice to move to said country in the first place was not linked to football in any way".*

  - The medical certificate filed by SL Benfica in support of the Second Application *"is a statement that pre-dates the one that was submitted with the First Application. As if this was not enough, the document is non-conclusive either, as it does not indicate anyhow that the Father was prescribed to move to Portugal for his health conditions".* As a matter of fact, the medical certificate presented by the FPF simply attest of the fact that the Player's father suffered from certain diseases in April 2018 and felt that the warmer climate of Portugal could help mitigate his pain. *"The physician is simply stating that the Father considered that a warmer climate could help. A warmer climate which, as correctly indicated in the First Decision, can be found in many countries".* This document does not bring new information, which was unknown at the time of the First Decision of the FIFA Single Judge.

- The protection of minors constitutes one of the principles included in the agreement that was concluded between FIFA, UEFA and the European Commission in March 2001 and is one of the essential pillars of the RSTP 2001 as well as of the currently valid edition. As a matter of principle, *"the exceptions contained in Article 19(2) & (3) RSTP are considered to be exhaustive, and that the Sub-Committee, has created a very strict jurisprudence, basically applying the provision at stake by the word and allowing the application of an exception only in cases in which the conditions contained in Article 19(2) RSTP are doubtlessly fulfilled. In particular, it needs to be emphasised that* ***the exceptions contained in Article 19 RSTP can only be handled restrictively in view of the protective purpose of this provision****. The CAS case law has consistently corroborated these points"* (emphasis added by FIFA). Only a very strict approach of the exceptions provided under Article 19 RSTP allows the avoidance of possible abuses as stakeholders such as agents, family members or clubs will attempt to explore all avenues in order to circumvent the FIFA provisions on the protection of minors.

- It was the burden of FPF on behalf of SL Benfica to prove that that the relocation of the X. family in Portugal was independent from the Player's football activity. *"In this respect [it] is of utmost importance to bear in mind that the CAS jurisprudence on the topic has clarified numerous times that football does not necessarily have to be the main reason, but it* ***is sufficient to exist amongst other circumstances*** *in order to exclude the application of the exception"* (emphasis added by FIFA). In the present case, the new documentation filed in support of the Second Application does not prove that the reasons to move to Portugal were entirely independent from the Player's football activity. The evidence submitted in support of the Second Application essentially consists of two types of documentation: (a)

medical reports concerning C.'s health and (b) papers allegedly showing that the family decided to remain in Portugal notwithstanding the First Decision of the FIFA Single Judge.

- *"Regarding the […] documents showing the family's decision to stay in Portugal notwithstanding the First Decision, FIFA considers that it is conceptually difficult to maintain that this occurrence can* ***retroactively*** *justify the move to Portugal in the first place. (…) The fact that the family in 2021 is still in Portugal does not automatically entail that the decision to move there in 2018 was genuinely unlinked to football reasons"* (emphasis added by FIFA).

- The chronological sequence of the events preceding the relocation of the X. family abroad shows the weight of the football factor in the decision to move to Portugal. At least it does not alter the conclusion taken in the First Decision that, although possibly not the only reason, football was part of the decision-making progress to move to Portugal:

  "(…)

  i. The Player is a very talented young footballer who was proficiently playing in Sweden from a very early age;

  ii. He was already considered talented in the eyes of the media and football clubs in Europe before turning eleven years old;

  iii. In the summer of 2017, he moved to Spain first (with his family) in order to be registered with one of the biggest clubs in Europe known for its proneness to engage minors in its youth categories: FC Barcelona;

  iv. In January 2018, when the registration with FC Barcelona did not go through, the family moved to Portugal, as Benfica had also shown interest in registering him;

  v. In April 2018, when already in Portugal, the Father obtained medical statements from Dr P. explaining that he felt that a climate warmer than in Sweden would help alleviate the pain of his disease;

  vi. In September 2018, the Parents started working in Portugal".

V. JURISDICTION

52. The jurisdiction of the CAS, which is not disputed, derives from the Articles 57 *et seq.* of the applicable FIFA Statutes and Article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties.

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

54. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VI. ADMISSIBILITY

55. The appeal is admissible as SL Benfica submitted it within the deadline provided by Article R49 of the Code as well as by Article 58 (1) of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VII. APPLICABLE LAW

56. Article R58 of the Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

57. Pursuant to Article 57 (2) of the applicable FIFA Statutes, *"[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".*

58. In their respective written submissions, the Parties expressly confirmed that, subject to the primacy of applicable FIFA's regulations, Swiss Law should apply to the extent warranted. The Sole Arbitrator agrees with this line of reasoning.

59. As a result, and in light of the foregoing, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily, whenever warranted.

60. The present case was submitted to FIFA on 29 January 2021, *i.e.* after 18 September 2020 and 1 January 2021, which are the dates when the FIFA Statutes, September 2020 Edition, and the RSTP, January 2021 Edition, came into force.

61. These are the editions of the rules and regulations, which the Sole Arbitrator will rely on to adjudicate this case.

VIII. PROCEDURAL ISSUE – NEW EVIDENCE

62. In its Appeal Brief, SL Benfica called Dr K. to testify at the hearing before the CAS *"about C. disease and his current clinical status".*

63. On 2 June 2021, SL Benfica was ordered to produce a witness statement upon which Dr K. would be heard. This document was filed on 21 June 2021 but Dr K. was not among the witnesses testifying at the hearing held on 30 June 2021.

64. Bearing in mind that Dr K. could not be cross-examined upon her written statement, this document must be regarded as new evidence filed after the submission of the Appeal Brief.

65. Article R56 of the Code provides the following:

> *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".*

66. At the hearing before the CAS, FIFA objected to the admission into evidence of Dr K.'s witness statement. The Sole Arbitrator finds that, should this document be of any relevance, it could have been obtained at a much earlier stage of these arbitral proceedings, in particular before the submission of the Appeal Brief. In other words, the Sole Arbitrator does not see exceptional circumstances justifying the admission of this new evidence. Based on Article R56 of the Code, in view of FIFA's objection and in the absence of exceptional circumstances, the Sole Arbitrator finds that Dr K.'s witness statement must be excluded from these proceedings.

IX. MERITS

67. In the Appealed Decision, the FIFA Single Judge held that the First and Second Applications were submitted by the FPF on behalf of the same club, concerning the same Player and pursuant to the same regulatory exception from the general prohibition of international transfers of minors; *i.e.* Article 19 (2) lit. a) RSTP. As a consequence, he considered that the First Decision (issued on 4 June 2018) rejecting the First Application was final and carried the authority of *res judicata* with respect to the fact that the relocation of the X. family in Portugal was football-related. He concluded that the Second Application was therefore inadmissible as it was not supported by facts on which SL Benfica was unable to rely at the time of the submission of the First Application and which could establish that the relocation of the X. family was not linked to football reasons. In this regard, the FIFA Single Judge declared that the Second Application was merely based on the time spent by the Player's family in Portugal after its relocation, but did not entail a different appreciation of the case with regard to the reasons having led to said relocation. According to SL Benfica, a) the Principle of *res judicata* cannot apply in the present dispute, b) the X. family did not move to Portugal for reasons linked to football and c) even if the relocation of the X. family was football related (*quod non*), it was in the Player's best interests to be able to be registered with SL Benfica.

68. Hence, the main questions to be resolved by the Sole Arbitrator are:

A. Is the First Decision issued by the FIFA Single Judge on 4 June 2018 vested with a *res judicata* effect with respect to the fact that the relocation of the X. family in Portugal was football-related?

B. Was the relocation of the X. family in Portugal football-related?

C. Is the fact that the X. family stayed in Portugal after the First Decision of any relevance as regards the exceptions to the prohibition of international transfers of minors?

A. Is the First Decision issued by the FIFA Single Judge on 4 June 2018 vested with a *res judicata* effect with respect to the fact that the relocation of the X. family in Portugal was football-related?

69. The principle of *res judicata* prohibits an identical claim that has already been decided in a final manner being reheard in a new procedure between the same parties (Decision of the Swiss Federal Tribunal, 4A_536/2018, 16 March 2020, consid. 3.1.1). Hence, an earlier and final adjudication by a court or arbitration tribunal is conclusive in subsequent proceedings involving the same subject matter or relief, the same legal grounds and the same parties (the so-called "triple-identity" criteria). *Res judicata* is said to have a positive and a negative effect. The positive effect of *res judicata* is the termination of a dispute in a final and binding manner between the parties. The negative effect prevents the re-litigation of the subject matter of the judgment or award, also referred to as ne bis in idem (CAS 2015/A/3959).

70. An arbitral tribunal violates procedural public policy if it disregards the *res judicata* effect of a previous decision or if the final award departs from the opinion expressed in an interlocutory award disposing of a material preliminary issue (ATF 136 III 345, consid. 2.1; ATF 128 III 19, consid. 4a).

71. According to FIFA, decisions issued by sport governing bodies have *res judicata* effect. It relies on several CAS awards as well as on one decision of the Swiss Federal Tribunal rendered on 28 August 2014 (ATF 140 III 520).

72. In the case ATF 140 III 520 (as summarized in CAS 2016/A/4408 para. 85), the FIFA Dispute Resolution Chamber ("FIFA DRC") (acting as a first instance body) found that the player had terminated without just cause his employment contract with his former club. As a consequence, the FIFA DRC ordered the player and his new club (the "co-defendants") to pay jointly and severally an amount of GBP 400,000 to the former club for unilateral and unjustified termination of the working relationship. Both co-defendants challenged the said decision before the CAS and the two appeal proceedings were consolidated. However, the player's appeal was deemed withdrawn as he failed to pay the advance on costs in a timely fashion. Relying on this withdrawal, the former club argued inter alia that the decision of the FIFA DRC came into force and that the CAS had no jurisdiction to hear the appeal of the new club. In a decision dated 20 November 2013, the CAS set aside the decision rendered by the FIFA DRC and referred the case back to the first instance body for a new decision. The former club brought the matter before the Swiss Federal Tribunal, which held that the CAS had no jurisdiction to annul the decision rendered by the FIFA DRC, insofar as this decision concerned the case between the former club and the player. As a matter of fact, it found that the decision issued by the FIFA DRC acquired force of *res judicata* between the player (who withdrew his appeal) and the former club. The CAS award was therefore annulled to this extent and upheld as to the rest.

73. FIFA relies in particular on a specific excerpt where the Swiss Federal Tribunal made the following finding (ATF 140 III 520, consid. 3.2.2):

> *"Cependant, le TAS a commis la même erreur en annulant le point 2 du dispositif de la décision de la CRL, lequel intéressait exclusivement la cause divisant [l'ancien club] d'avec le joueur. Il lui a échappé, ce faisant, que le retrait de l'appel du joueur, suivi de la radiation de la procédure d'appel, avait mis un terme à cette procédure d'appel, si bien que la décision de première instance était, depuis lors, revêtue de l'autorité de la chose jugée à l'égard du joueur et [de l'ancien club]"* (emphasis added).
>
> Translation from French to English found on the website: *www.swissarbitrationdecisions.com*:
>
> *"However, the CAS made the same mistake by annulling §2 of the operative part of the DRC award, which exclusively concerned the dispute between the [former club] and the Player. In so doing, it overlooked that the withdrawal of the Player's appeal (...) put an end to this appeal procedure so that the decision of first instance was henceforth res judicata as to the Player and the [former club]".*

74. In other words, in the case ATF 140 III 520, it was found that an arbitral tribunal acting in appeal proceedings no longer had jurisdiction if the appeal was withdrawn. The ATF 140 III 520 was directly concerning the jurisdiction of the CAS and very indirectly the *res judicata* effect of the decision issued by the FIFA DRC. With regard to this last aspect, commentators find that the terms *"the decision of first instance was henceforth res judicata as to the Player and the [former club]"*, are the result of a misuse of language as decisions of an association cannot be vested with a *res judicata* effect (BESSON S., in Revue de l'arbitrage 2017, n° 3, Chronique de jurisprudence arbitrale en matière sportive, p. 1028).

75. As a matter of fact and in a decision directly related to the *res judicata* effect of a decision issued by sport governing bodies, the Swiss Federal Tribunal expressly stated that *"As a rule, when the CAS issues a decision as an appeal body, it is in appeals concerning decisions issued by the jurisdictional bodies of sport federations. Such jurisdictional bodies are not real arbitral tribunals and their decisions are mere embodiments of the will of the federations concerned; in other words, they are acts of administration and are not judicial acts (ATF 119 II 271 at 3b, p. 275 f.). This also applies to the decisions taken by the jurisdictional bodies of FIFA (ATF 136 III 345 at 2.2.1, p. 349)"* (Decision of the Swiss Federal Tribunal 4A_222/2015, 28 January 2026, consid. 3.2.3.1 - translation from French to English found on the website *www.swissarbitrationdecisions.com*).

76. In continuation with the above, the CAS has ruled the following in a very recent decision issued on 18 September 2020 (CAS 2019/A/6483, para. 121):

> *"The Panel notes that according to Swiss law the principle of res judicata only applies to arbitral awards and court decisions. The types of decisions that enjoy res judicata effects are defined by law. It is not within the Parties' autonomy to extend the number or types of decisions that are vested with res judicata effect. If it were otherwise, a violation of the res judicata principle could not – contrary to jurisprudence of the [Swiss Federal Tribunal] – constitute a violation of the ordre public. There is no provision in Swiss law that confers res judicata effects to decisions of association tribunals. Decisions of a judicial body of a sport federation, which are not arbitral tribunals, are mere embodiments of the will of the federations concerned (SFT 4A-374/2014, consid. 4.3.2 and SFT 4A_222/2015, consid. 3.2.3.1)".*

77. The Sole Arbitrator does not see any reason to depart from the foregoing considerations. It results that the First Decision issued by the FIFA Single Judge on 4 June 2018 cannot be vested

with a *res judicata* effect insofar are concerned the reasons which led the X. family to move to Portugal.

78. This conclusion leads to the result that the Appealed Decision must be set aside. As a matter of fact, it follows from the operative part of such decision, that the FIFA Single Judge did not reject the Second Application but held that it was inadmissible, because it was barred by *res judicata*. For the reasons exposed hereabove, this is not the case.

79. The Sole Arbitrator is then left with the alternative of referring the case back to FIFA (to decide upon the rejection or the granting of the Second Application) or rendering a decision on the merits.

80. Bearing in mind that a) none of the Parties requested the case to be referred back to FIFA, b) SL Benfica requested the CAS *"[To] render of a new decision admitting the application submitted on behalf of [SL Benfica] and approving the international transfer of the Player A. to [SL Benfica]"* (addressing thereby an issue of substance), c) FIFA requested the CAS *"to issue an award on the merits: (a) rejecting the reliefs sought by the Appellant in their entirety"*, d) both Parties have presented lengthy arguments on the merits of the case, the Sole Arbitrator concludes that he has jurisdiction to decide whether or not the criteria for the exception to the prohibition of international transfers of minors, have been met in the present matter. Such a finding also favours a speedy and more cost-effective resolution of the dispute than a referral of the case to the FIFA Single Judge, whose position on the substance of the case has already been exposed in detail in the Appealed Decision.

B. Was the relocation of the X. family in Portugal football-related?

81. In his First Decision rendered on 4 June 2018, the FIFA Single Judge concluded that the Player's potential registration with SL Benfica was the predominant reason for the relocation of the X. family in Portugal.

82. In the Appealed Decision, the FIFA Single Judge maintained that the documentation filed in support of the Second Application only provided additional explanations as to the events having followed the relocation of the X. family in Portugal but did not entail a different appreciation of the case with regard to the reasons having led to said relocation.

1. In general

83. In March 2001, FIFA reached agreement with the European Commission on the main principles for the amendment of FIFA's rules regarding international transfers. With respect to the protection of minors, the *"new regulations set forth strict conditions for the international transfer of minors (i.e., players under the age of 18), in order to provide a stable environment for the training and education of players. The abuses to which minors have been exposed in the past must be curbed. Minors cannot transfer internationally, unless they move to another country with their family for family reasons. National associations shall not register minors who have transferred without their family, or with their family in case the family's move was prompted by the transfer of the minor to another football club"* (FIFA circular letter n° 769, of 24

August 2001). The purpose of the regulation put in place is to safeguard young players as well as training clubs from being exploited (FIFA circular letter n° 1190, of 20 May 2009).

84. Article 19 RSTP is the provision which sets out the fundamental principles of the regulatory regime established by FIFA regarding the international transfer of minors. It is entitled *"Protection of minors"* and, at its paragraph 1, it establishes that *"International transfers of players are only permitted if the player is over the age of 18"*.

85. There are exceptions to this principle, which are listed in paragraph 2 of Article 19 RSTP and at least one of them must be met in order for an international transfer of a minor to take place:

- Article 19 (2) a) RSTP: *"The player's parents move to the country in which the new club is located for reasons not linked to football"*.

- Article 19 (2) b) RSTP: Minors aged between 16 and 18 can be transferred within the European Union (EU) or the European Economic Area (EEA) provided that their new clubs fulfil a certain number of minimum obligations (sporting training in line with the highest national standards, academic/educational training to allow the players to pursue a career other than football, arrangements to ensure their welfare in the best possible way, etc.)

- Article 19 (2) c) RSTP: *"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 (…)"*.

- Article 19 (2) d) RSTP: deals with the situation of unaccompanied refugees.

- Article 19 (2) e) RSTP: deals with the situation of unaccompanied exchange students.

86. It must be observed that the exceptions provided for under Article 19 (2) d) and e) were introduced recently and came into force on 1 March 2020. In its Circular Letter N° 1709, FIFA explained that these new exceptions were *"unwritten exceptions to the general prohibition on the international transfer of minors [which] have been incorporated to reflect the well-established jurisprudence of the Sub-Committee of the Players' Status Committee"*. This suggest that the list of exceptions contained in Article 19 (2) RSTP is not exhaustive, which was corroborated namely in the following CAS awards:

- CAS 2008/A/1485: In that case, FIFA claimed that the list of exceptions contained in Article 19 (2) RSTP was exhaustive, but, nevertheless, accepted that two further unwritten exceptions (relating to students only) existed (As highlighted above, a new exception related to unaccompanied students was implemented in the RSTP 2020 Edition).

- TAS 2012/A/2862 and TAS 2015/A/4178: The CAS Panels held that FIFA's internal jurisprudence confirmed the non-exhaustive nature of the list of exceptions of Article 19 (2) RSTP. According to an internal memo filed by FIFA, in the presence of very special circumstances, which did not meet any of the requirements of Article 19 (2) RSTP, a club could submit a formal written request to FIFA to consider the specific case and issue a

formal decision. In the internal memo, it is further stated that the assessment of such requests was made on a case-by-case basis.

87. However, according to several CAS cases, Article 19 RSTP sets key principles designed to protect the interests of minor players and, therefore, must be applied in strict, rigorous and consistent manner. This means that there can be no other exceptions to the principle of Article 19 RSTP than those drafted in its paragraph 2 (CAS 2015/A/4312; para. 78; CAS 2013/A/3140; para. 8.23; CAS 2005/A/955 & 956).

2. In casu

88. In the present case, it is undisputed that SL Benfica relies on the exception governed by Article 19 (2) lit. a) RSTP in order to be authorised to register the Player. It carries the burden of proof to demonstrate that football is not the reason, or one of the reasons, for the move of the Player's parents to Portugal (CAS 2015/A/4312, para. 79; CAS 2013/A/3140, para. 8.25 et seq.). Hence, it is for SL Benfica to establish the true intention and motivation of the Player's parents. In that respect, it is not sufficient to simply state that the parents did not seek, as primary or main objective, to achieve the footballing activities of their child. Article 19 (2) lit. a) RSTP aims to protect the young player who follows his family moving abroad for personal reasons, and not the parents who follow their child in the view to integrate a club situated abroad (CAS 2013/A/3140, para. 8.25 and references). A CAS Panel found that *"when the move of the family was motivated by a mixture of several reasons, and where each one of the other proven reasons is legitimate per se, the application of the exception will be assessed and decided based on the weight of the "football factor" within the whole range of reasons and the overall circumstances of the matter, such as: what were the other reasons? Whether all the family moved? To what extent the specific location to which the family decided to move was chosen with due consideration of the football activity of the minor, etc."* (CAS 2015/A/4312, para. 81).

89. Over the time, the reasons given by the X. family for its relocation in Portugal were the following:

- In a statement dated 23 January 2018, the Player's parents declared that *"their change of residence to Portugal occur by motifs related with the health and personal issues of the Declarants. [They] are holders of their own income, which are sufficient to provide for the payment of all the expenses related with their financial support and are also considering proceeding with some corporate investments in Portugal, being at this moment analyzing the possibility to proceed with the opening of a commercial establishment in Portugal - on the food market"*. On the file, there is a bank statement printed on 6 January 2018 which confirms that C. was the holder of an account with a balance of EUR […].

- In a statement dated 16 May 2018, the Player's parents explained that they had decided to move to Portugal in November 2017 after they *"had come [with their family] to visit Portugal (to know the country and to see if it was what they were looking for) and since they loved the country they started to prepare their moving to Portugal"*. The relocation was exclusively explained for medical reasons related to C.'s health condition. According to a medical certificate dated 14 April 2018, *"C. (…) feels that the warmer climate in Portugal eases his pains and he will seek further medical help in Portugal"*. Likewise, a medical certificate dated 30 April 2018 confirms

that a *"warmer climate may ease [C.'s] pains and other symptoms and it is advisable that he finds country with such a climate to live in"*.

- In a statement dated 26 January 2021, the Player's parents declared that, in the beginning of 2017, they decided to live abroad for medical reasons and, at first, moved to Barcelona, in June 2017. *"However, declarants and their children have not adapted to the city and they start looking a new country to move themselves; (…) In November 2017 declarants visited Portugal, which has a mild and sunny climate; (…) During that visit, the declarants made the final decision to move to Portugal"*.

- In the Appeal Brief, it is stated that *"The moving to Portugal was due to a disease of the Player's father"* (para. 67) and that the *"life project of the player's parents was to open a restaurant and initially considered that in Barcelona they would have the opportunity to do so"* (para. 72). *"In a first moment, in June 2017, Player's parents decided to move to Barcelona"* (para. 71). *"However, after a period of living in Barcelona, the parents realized that it would be awfully expensive to open a restaurant there. Beyond these circumstances, the Player's parents did not find any accommodation they liked, (the apartments they liked were not affordable). After a visit to Lisbon, in November 2017, Player's parents decided to move definitively to Portugal. They chose Portugal, because it is a very safety country, with a mild and sunny climate. Besides, it is much cheaper to live in Portugal than in Spain"* (para. 71 to 77).

- At the hearing before the CAS, and for the first time, it was claimed that:

  - for many years, long before 2017, the X. family had planned to move abroad, in a place where the climate was warmer than in Sweden;

  - before moving to Portugal, C. sold his restaurants which provided a certain financial comfort enabling the family to live each day without worries;

  - one of the main reasons for leaving Barcelona was due to the fact that D. felt miserable in this city.

90. In other words, and at first, the move to Portugal was motivated mainly by the health issues of the Player's father. Then, it became the realization of a long-desired family dream. The effective date of the decision to move also varied. In the statements of 2018, the Player's parents only explained that they had decided to move to Portugal in November 2017. In their statement of 26 January 2021, they declared that they had taken the decision to live abroad in the beginning of 2017. According to the Appeal Brief, they elected to move to Barcelona in June 2017.

91. In its Appeal Brief, SL Benfica insisted on the fact that the relocation to Portugal was absolutely not football related. At the hearing before the CAS, C., his daughter and the Player endorsed this position.

92. It is unpersuasive that the X. family chose to move to Portugal exclusively for medical reasons and for business opportunities. The evidence filed by SL Benfica does not establish in a convincing manner that the X. family decided to move to Portugal for reasons which were completely independent from the Player's football career. As a matter of fact:

- Bearing in mind that the relocation to Spain and Portugal was mainly explained by C.'s health condition, it is quite surprising that there is no evidence on file regarding his medical follow-up. SL Benfica only submitted two medical certificates, dated 14 and 30 April 2018, issued by a specialist in Sweden (and not by a Spanish or Portuguese practitioner). Much more, the said certificates seem to adopt a circumspect approach as regards the benefit of the warmer climate on C. (*"The patient feels that the warmer climate in Portugal eases his pains and he will seek further medical help in Portugal"*; *"A warmer climate may ease his pains and other symptoms and it is advisable that he finds country with such a climate to live in"* – emphasis added). At least, the said documents do not suggest that the relocation to a warmer country was imperative or even medically recommended.

- The second motive put forward for the relocation of the X. family in Spain and Portugal was to explore business opportunities. There is no evidence on file that the Player's parents took any steps in that regard while in Spain. Much more, after they moved to Portugal, they did not work until September 2018; *i.e.* 9 months later. At the hearing before the CAS, C. testified that he and his wife had decided to take some time off and did not need the money as they were financially independent. Such an explanation is unconvincing considering that a) C.'s fortune in January 2018 amounted to EUR […] and b) the Player's parents accepted to work for fairly small salaries as a sales promoter (paid EUR […]/month plus 15% premium), respectively as a teacher of children with special needs (paid EUR […]/month per accompanied child). Much more, according to SL Benfica's Appeal Brief, the X. family could not afford to live in Spain and, in 2019, chose to move to another house with a cheaper rent.

- It is only in January 2020 that the Player's parents eventually set up their company and in September 2020 that they opened their restaurant; *i.e.* almost three years after their relocation in Portugal.

- The move to Barcelona seems very sudden and unprepared, in particular for a family with three children aged 12, 10 and 5, respectively. When the family arrived in Barcelona, it stayed in an Airbnb for the first three weeks, had no concrete plan as to what the parents would do for a living, and did not even begin to complete the necessary administrative formalities to stay in Barcelona. At least the contrary has not been established. In this respect, it must be observed that the members of the X. family were still Swedish residents when they moved to Portugal in January 2018. Much more, the only bank statement on file does not substantiated C.'s testimony that he had access to sufficient financial resources to meet the needs of his family for the mid and long term. It is also quite striking that the Player's parents did not study the Spanish restaurant market carefully, before selling their belongings in Sweden and moving with their three young children in Barcelona. They waited to be on-site to eventually find out that it would *"be awfully expensive to open a restaurant there"*.

- The exact date of the arrival of the X. family in Barcelona is not substantiated by any document. The same can be said about how the family spent its time there and the measures taken by the Player's parents to find a job or a school for the children. The only

documented information made available is that the Player trained with Santa Cugat FC, from September to December 2017.

- In contrast, the move to Portugal was much more prepared as the Player's parents a) hired a lawyer in November 2017 to assist them finding a home, b) contacted SL Benfica also in November 2017, c) signed a lease agreement for a villa on 10 January 2018, d) obtained in January 2018 certificates of residency valid until January 2023, e) contacted SL Benfica again at the end of January 2018 so that it would *"start the legal procedures at the Portuguese FA and FIFA to apply to the [Player's] transfer process"* and f) made the necessary arrangements so that, in February 2018, the Player attended *Colégio […]* and trained with SL Benfica. In March 2018, the FPF filed its First Application.

- Many press articles from various media (SOL-SAPO; ABOLA; SPORT.ES; FICHAJES.NET; CUGAT MEDIA; PRESSREADER) published in February 2018, confirm that a) the Player was very talented, b) *"Barça had long been following the development of the Swedish pearl. Last summer, A.'s family moved to Sant Cugat in view of Barça. In other words, he played for Sant Cugat (he scored seven goals in nine games) but attended some training sessions with FC Barcelona's youth teams"* (translated into English by FIFA), c) the Player had a contract with Sant Cugat, d) FC Barcelona was interested in enrolling the Player in its academy but stepped back due to recent sanctions imposed by FIFA following the *"signing of underage players"*, e) SL Benfica took advantage of the defection of FC Barcelona to secure a deal with the Player, f) the move of the X. family to Portugal was the consequence of SL Benfica's interest for the Player.

  On the website of Sant Cugat FC, the following information was posted (as translated into English by FIFA): *"Midfielder A., until now a player in Alevín A, is leaving for Benfica. The Swedish player, who came from the Hammarby club in Stockholm, has played in 9 games this season wearing the red-and-black shirt. At first, the player settled in Sant Cugat with the intention of making the leap with FC Barcelona, but has finally chosen to try his luck at the Portuguese club. From Sant Cugat FC, your home for the last few months, we wish you the best of luck in your new stage!".*

  At the hearing before the CAS, C. simply denied the veracity of the information contained in the press articles and just asserted that he had no explanation as to where the fake news came from. Such a position is also not very convincing. One cannot understand why journalists from news websites would make up stories about a 11-year-old Swedish boy. Furthermore, what was reported by the journalists was corroborated by facts: a) the Player obviously draw a lot of attention to himself, b) he played with Sant Cugat, c) FC Barcelona encountered problems with the signing of minor players, d) the Player moved to Portugal and e) was immediately training with SL Benfica. It seems very unlikely that the move of the X. family to Barcelona and then to […] (*i.e.* near the premises of both clubs which were interested by the Player) was merely fortuitous.

- According to SL Benfica's own statement of 17 April 2018, it had its first phone conversation with the Player's father in November 2017. At that occasion, the club confirmed that it would *"start the legal procedures at the Portuguese FA and FIFA to apply to the [player's] transfer process"*, once the X. family was completely installed in Portugal. The fact

that SL Benfica was willing to recruit the Player and cope with the resulting administrative burden on the basis of a simple phone call indicates clearly that the club was well aware of the Player's potential before his parents decided to move to Portugal. It is likely that SL Benfica noticed the Player when he disputed a tournament against its team in May 2017.

- On 23 January 2018; *i.e.* just after the move to Portugal was completed, the Player's parents signed a Bona Fide Declaration intended to support the First Application, which was also rapidly filed on 23 March 2018. The diligence with which the Player's parents carried out with the required formalities to register their son with SL Benfica also gives credibility to what was reported on the news websites.

93. Based on the foregoing, the Sole Arbitrator finds that SL Benfica did not satisfy its burden of proof with respect to the fact that football was not the reason, or one of the main reasons, for the move of the X. family to Portugal. Quite the contrary, in view of the timeline surrounding the relocation of the X. family, in combination with the other circumstances of the relevant move, it appears that the football factor was predominant. Hence, the requirements of Article 19 (2) lit. a) RSTP are not met.

C. Is the fact that the X. family stayed in Portugal after the First Decision of any relevance as regards the exceptions to the prohibition of international transfers of minors?

94. It is undisputed that the X. family has been living in Portugal since January 2018 and that its members are well-integrated. It is also uncontroversial that the Player's parents have opened a restaurant, which they had planned to do for a long time. Nevertheless, these elements do not change the fact that the relocation in Portugal was related in whole or for an important part to football reasons.

95. SL Benfica as well as the Player's father insisted that despite the refusal of the international transfer of the Player in June 2018, the X. family decided to stay in Portugal. They claimed that if the relocation was somehow linked to football, they would have returned to Sweden, where the Player could have kept playing in official games.

96. Such a line of reasoning is unpersuasive for at least two reasons: The first one is that the X. family had sold all of its belongings in Sweden. There is no indication on file, which suggests that they had anything to return to and such a stand would be inconsistent with the fact that it was a family dream to live abroad. It is necessary to emphasise that it is conceivable that the relocation to Portugal was certainly motivated by a mixture of several reasons. However, based on the circumstances and the sequence of events of the present matter, it is unquestionable that football played a significant role in the Player's parents move to Spain and then to Portugal. The second reason is that SL Benfica and the Player are obviously in close contact: Since February 2018, the Player trained with SL Benfica and then attended *"Sport Lisboa e Benfica Football School program"*, while playing with two other Portuguese clubs, before training again with SL Benfica since April 2019 until the current time. In addition, should the information reported by the media be true and had a deal been secured between SL Benfica and the Player, depending on the terms of the contract, it seems plausible that the X. family had no other choice

but to stay in Portugal. SL Benfica insistence to register the Player shows that its interest in the Player is strong and has remained unchanged since 2017-2018.

97. According to SL Benfica, the fact that the X. family stayed in Portugal after the First Decision issued on 4 June 2018 should constitute another exception to the general prohibition of international transfer of minors. In addition, it is SL Benfica's case that, based on the United Nations Convention on the Rights of the Child and on the Charter of Fundamental Rights of The European Union, it is in the Player's best interest to be registered with SL Benfica.

98. Hence, the following two issues must be addressed by the Sole Arbitrator:

    1. Does the situation of the Player meet the requirements of an unwritten exception to the general prohibition of the international transfer of a minor set by the RSTP?

    2. Are the United Nations Convention on the Rights of the Child and on the Charter of Fundamental Rights of The European Union applicable to the Player's situation?

1. Does the situation of the Player meet the requirements of an unwritten exception to the general prohibition of the international transfer of a minor set by the RSTP?

99. The method of interpretation of the statutes of an association may vary depending on the nature and dimension of the legal person involved. As regards the statutes of larger entities, such as UEFA or FIFA, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller associations, the statutes may more legitimately be interpreted by reference to the methods of interpretation of contracts, namely according to the principle of good faith (Decision of the Swiss Federal Tribunal 4A_600/2016, 28 Jun 2017, consid. 3.3.4.1 and references). The same can be said when interpreting rules of a sports association at a lower level than the statutes (Decision of the Swiss Federal Tribunal 4A_564/2020, 7 June 2021, consid. 6.4 and references); *i.e.* the RSTP.

100. According to the Swiss Federal Tribunal, the starting point for interpreting a set of rules is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (ATF 132 III 226 at 3.3.5 and references ATF 131 II 361 at 4.2).

101. The wording of Article 19 (2) lit. a) RSTP is clear and unambiguous (*"The player's parents move to the country in which the new club is located for reasons not linked to football"*). According to this provision, there are two decisive factors for the exception to come into play: a) the Player's parents must

move *"to the country in which the new club is located"* and b) the reason for which the Player's parents decided to move is not football-related.

102. Article 19 (2) lit. a) RSTP does not offer a way to rectify the situation, when the move of the Player's parents was predominantly motivated by football reasons. The fact that the Player's family decided to stay in spite of the refusal of the Player's transfer is not likely to establish that it is not trying to find a way to circumvent the regulations related to the protection of minors. It also does not lead to the conclusion that the Player's interests were at the centre of its consideration. In addition, should the stay of the family be a factor to apply the exception under Article 19 (2) lit. a) RSTP, it would raise numerous issues (how long must the stay be? What must be the sustainability of the parents' professional situation? What if all the members of the family do not adjust?) and could open the door to abusive and arbitrary practices (the clubs could pay for the families' expenses, etc). As drafted, Article 19 (2) lit. a) RSTP sets a clear standard which would apply uniformly, equally and in a predictable fashion. There is nothing else for the Sole Arbitrator but to apply this provision since he does not have the task to legislate, but to implement the rules.

103. The question arises then, whether there is some unwritten exception to the general prohibition of the international transfer of minors. On several occasions, FIFA has accepted that the well-established jurisprudence of the Sub-Committee of the Players' Status Committee has granted the international transfer of minors on the basis of an exception not listed under Article 19 (2) RSTP (FIFA Circular Letter N° 1709; TAS 2012/A/2862 and TAS 2015/A/4178).

104. According to the general legal principle of burden of proof, any party claiming a right on the basis of an alleged fact must carry the burden of proof, establishing that the alleged fact is as claimed. This is in line with Article 8 of the Swiss Civil Code, which reads as follows: *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. As a result, the Sole Arbitrator reaffirms the principle established by CAS jurisprudence that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them .... The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (CAS 2014/A/3546, para. 7.3 and references).

105. Considering that the purpose of Article 19 RSTP is the protection of minors, which constituted one of the principles included in the agreement that was concluded between FIFA, UEFA and the European Commission in March 2001, any deviation from this provision should only be considered in the most extraordinary circumstances.

106. In the present case, SL Benfica argued that the Second Application was filed because of the Player's sadness caused by the fact that he had been prevented from playing in official matches for more than three years and because his family is well-integrated in Portugal. SL Benfica has not established that such a situation falls under an unwritten exception allowing the international transfer of a minor, in spite of the predominant football-related reason linked to the move of the Player's parents *"to the country in which the new club is located"*.

107. In light of the foregoing, the fact that the X. family stayed in Portugal after the First Decision does not change the fact that the Player's situation does not meet the applicable requirements for his international transfer to be accepted.

2. Are the United Nations Convention on the Rights of Child and on the Charter of Fundamental Rights of The European Union applicable to the Player's situation?

108. SL Benfica claimed that, in accordance with Article 24 (1) of the Charter of Fundamental Rights of The European Union as well as with Article 12 of the United Nations Convention on the Rights of the Child, the Player should be allowed to express *"his position about this matter and in particular his willingness to play football, within the present arbitral proceedings"* during the present arbitral proceedings. The request of SL Benfica was granted as the Player had testified during the hearing held before the CAS on 30 June 2021.

109. Furthermore and on the basis of the same set of rules and in particular Article 31 of the United Nations Convention on the Rights of the Child (which provides that *"States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts"*), SL Benfica claimed that the decision to be rendered in the present matter must take into account the best interests of the Player, who must be allowed to play football in the country that his parents have chosen to live in. According to SL Benfica, *"the rejection of the transfer would cause even more sadness and anger in the Minor"*, who feels discriminated as, contrary to his friend, he has not been allowed for more than three years to play in an official game of football. *"This circumstance has been very difficult to accept for the child (…). Certainly, the rejection of this application would cause the player a huge heartbreak and anguish"*.

110. All the rights which derive from these provisions obviously belong to the Player, who is not a party to the present arbitral proceedings. In this context, SL Benfica did not explain why it would be entitled to rely on this means of defence potentially belonging to a third party, *i.e.* how it would have legal standing to invoke these rights.

111. Furthermore, on the basis of the evidence adduced, SL Benfica did not explain how the Player's rights to engage in play and recreational activities were violated, considering that he is training with SL Benfica and can very well play in games, as long as they are not organised under the auspices of FIFA. In particular, it did not clarify how Article 19 RSTP, which is designed to protect the interests of minors and which has been at the centre of the negotiations with the European Commission in 2001, is contrary to the Charter of Fundamental Rights of The European Union and to the Convention on the Rights of the Child. It merely alleged that the Player felt sad and angry about the situation.

112. In any event, it must be noted that the question of the compatibility of Article 19 RSTP with European Community law has already been decided by other CAS panels, which found that FIFA rules limiting the international transfer of minor players do not violate any mandatory principle of public policy and do not constitute any restriction to the fundamental rights that would have to be considered as not admissible. In particular, they have found that the prohibition contained in Article 19 RSTP did not contravene any provision, principle or rule of the European Community (TAS 2012/A/2862 para.103 and references).

113. Hence, the argument made by SL Benfica in relation with the Charter of Fundamental Rights of the European Union and with the Convention on the Rights of the Child, must be dismissed.

D. Conclusion

114. For all the above reasons, the Sole Arbitrator finds that the request for the registration of the Player must be rejected, because the criteria for the exception to the prohibition of international transfers for minors have not been met in the present case.

115. However, the appeal of SL Benfica is partially upheld as, in its requests for relief, it asked the CAS to *"set aside the Appealed Decision dated 4 February 2021 rendered by the Single Judge of the FIFA Player's Status Sub-committee"*. For the reasons exposed in chapter IX.A of the present award, the Appeal Decision must be dismissed as the FIFA Single Judge falsely found that the Second Application was inadmissible.

116. The above conclusion makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected

117. The Sole Arbitrator wishes to express that he is not insensitive to the legitimate frustration and anger felt by the Player. He sincerely hopes that the Player will maintain his motivation and desire to achieve his goal of becoming a professional player. In less than a year, he will turn 16 and reach the age required to allow SL Benfica to obtain the necessary authorizations under Article 19 (2) lit. b) RSTP.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by SL Sport Lisboa e Benfica against the decision issued by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber on 4 February 2021 is partially upheld.

2. The decision issued by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber on 4 February 2021 is set aside.

3. The application filed on 29 January 2021 by the Federaçao Portuguesa de Futebol on behalf of its affiliated club, SL Sport Lisboa e Benfica, for the approval prior to the request for the International Transfer Certificate of the minor player, A., is rejected.

(…).

6. All other motions or prayers for relief are dismissed.