



## **DECISION of the FEI TRIBUNAL**

**dated 20 June 2011**

**Positive Anti-Doping Case No.:** 2010/09

**Horse:** CSILLAG

**FEI Passport No:** HUN 40252

**Person Responsible:** Csaba Kovacs / HUN

**Event:** CAI-A 2, Zanka, HUN

**Prohibited Substances:** Reserpine (Banned Substance),  
Acepromazine (Controlled Medication Substance),  
Detomidine (Controlled Medication Substance)

### **1. COMPOSITION OF PANEL**

Mr. Philip O'Connor  
Mr. Patrick A. Boelens  
Mr. Pierre Ketterer

### **2. SUMMARY OF THE FACTS**

**2.1 Memorandum of case: By Legal Department.**

**2.2 Summary information provided by Person Responsible (PR):**  
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

**2.3 Oral hearing:** none

### **3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 1<sup>st</sup> edition, effective 5 April 2010.

Veterinary Regulations ("**VRs**"), 12<sup>th</sup> edition, effective 5<sup>th</sup> April 2010, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

**3.2 Person Responsible:** Csaba Kovacs

**3.3 Justification for sanction:**

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.7 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

**4. DECISION**

**4.1 Factual Background**

1. CSILLAG (the "**Horse**") participated at the CAI-A 2 in Zanka, HUN, from 23 to 25 July 2010 (the "**Event**"), in the discipline of Driving. The Horse's carriage was driven by its owner, Mr. Csaba Kovacs, who is the Person Responsible in accordance with GRs Article 118 (the "**PR**").
2. The Horse was selected for sampling on 23 July 2010.
3. Analysis of the urine and blood sample no. FEI-5504824 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory ("HFL") in New Market, UK, by Ms. Ruth Schiller, Senior Scientist, under the supervision of Mr. Steve Maynard, Director of the Laboratory. The analysis of the blood sample revealed the presence of Reserpine. In addition, metabolites of Acepromazine and Detomidine were also detected in the urine sample of the Horse (Certificate of Analysis 62480 dated 12 August 2010).

4. The Prohibited Substances detected are Reserpine, Acepromazine and Detomidine. Reserpine is an alkaloid and anti-hypertensive drug used to treat chronic psychoses in humans and is also a long-acting sedative. Reserpine has a cumulative and long-lasting effect on the nervous system. Acepromazine is a tranquilizer, used as a pre-medication for anaesthesia or method of chemical restraint. Detomidine is an analgesic sedative. It has sedative and analgesic effects and is often used for minor procedures that require some sedation. Whereas Reserpine is categorized by the FEI as a *Banned Substance*, Acepromazine and Detomidine are classified as *Controlled Medication Substances*. Therefore, the decision at hand addresses both an *Anti-Doping* rule violation as well as a *Controlled Medication* rule violation. The finding of both *Banned Substances* and *Controlled Medication Substances* is considered as an *Anti-Doping* rule violation, see EAD Rules Article 10.7.5.
5. No request had been made for permission to administer Acepromazine and Detomidine to the Horse, and no Equine Therapeutic Use Exemption ("ETUE") form had been submitted for these Controlled Medication substances.

#### **4.2 The Proceedings**

6. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violations and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 24 August 2010. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
7. A Preliminary Hearing took place on 26 August 2010. The PR explained that the Horse had been administered, two days prior to the competition and without his knowledge, a dose of 1mg Domosedan by its blacksmith, since the latter had difficulties shoeing the Horse. Following the Preliminary Hearing, the Provisional Suspension was maintained by the Preliminary Hearing panel.

#### **4.3 The B-Sample Analysis**

8. Together with the Notification Letter of 24 August 2010, the PR also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the identification and opening of the B-Sample.
9. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

#### 4.4 The Further Proceedings

10. The PR submitted his explanations on 13 September 2010, through his counsel, Dr. Bösze László, Chairman of the Equestrian Association Veszprém. He affirmed that the Horse had been administered, on Tuesday, 20 July 2010, three days prior to the sampling, a dose of 1mg Domosedan in the form of an injection, before the Horse was shod. That the same product had been used at each shoeing in the past because the Horse was very sensitive and excited during the shoeing process. The PR further explained that the Equestrian Association Veszprém had started a thorough investigation led by Dr. László with the aim of detecting by whom or by which means the Prohibited Substances had entered the Horse's system. That the investigation had not uncovered any explanation, but that the Equestrian Association Veszprém had no reason to doubt that the PR had not used any Prohibited Substances. Furthermore, that there was a considerable amount of oleander plants in the surroundings of the Sport Stable Nemesvámos ("the Stable"), and that horses, while being harnessed and lead in and out of the Stable, could inevitably access and eat the leaves of the oleander plants. The PR contended that the extract of oleander, according to veterinarians and biochemistry experts taking part in the investigation, is the basic active ingredient of Reserpine. However, the PR did not submit any supportive evidence to support these allegations. Lastly, the PR raised stable security issues, claiming that the horses could be approached and accessed by any authorized person, enabling third persons to administer Prohibited Substances to the Horse. Again, however, he provided no evidence that there was any security breach in this case.

11. The FEI responded to the PR's submission on 17 December 2010. In its submission, the FEI confirmed that the active ingredient of the product used by the PR, Domosedan, is Detomidine. The FEI explained that in light of the fact that for a single normal dose of Detomidine, 0.02 mg would be counted per kilogram of the horse, and that the dose given to the Horse prior to the competition was very low. That insofar as the detection time for a single normal dose was about two (2) days, it was rather unlikely that the amount administered to the Horse would be detected on the sample taken on the day of the competition. With regards to the PR's allegation that the Horse had ingested oleander at the Stable, and that the oleander ingested lead to the positive test result for Reserpine, the FEI pointed out that the PR had not submitted any scientific explanation or evidence in support of his claim. In response to the alleged lack of stable security, the FEI contended that the PR had not explained how the alleged stable security issue could have possibly impacted the positive test result. The FEI concluded that at most, the PR had established how the Detomidine had entered the Horse's system, but had not established the source of the positive finding for Reserpine or Acepromazine. Regarding the PR's attempt to release himself

from any fault or negligence for the rule violation due to the stable security issue, the FEI argued that under the FEI rules and regulations, inadequate stable security does not diminish the Person Responsible's accountability for his horse nor the results of a medication control tests. The FEI further noted that the PR had not reported having taken any precautions to ensure that the Horse was free of Prohibited Substances at the time of the competition. In conclusion, the FEI contended that the PR had not established that he bears No Fault or No Negligence or No Significant Fault or No Significant Negligence for the rule violation.

#### **4.5 Jurisdiction**

12. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADCMR.

#### **4.6 The Person Responsible**

13. The PR is the Person Responsible for the Horse, in accordance with Article 118 GRs, as he was the driver of the Horse's carriage at the Event.

#### **4.7 The Decision**

14. The Tribunal is satisfied that the laboratory report relating to the A-Sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the HFL are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Reserpine, Acepromazine and Detomidine, which are Prohibited Substances, in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings.

15. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADCMRs. The Prohibited Substances found in the sample are classified as Banned Substances and Controlled Medication Substances.

16. In Doping and Medication cases, a strict liability principle applies as described in EAD Rules Article 2.1.1. Once a positive case has been proven by the FEI, the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in EAD Rules Article 10.5.1, or "No Significant Fault or Negligence," as set forth in EAD Rules Article 10.5.2.

17. However, in order to benefit from any elimination or reduction of the applicable sanction under EAD Rules Article 10.5, the PR must first establish how the Prohibited Substances entered the Horse's system. This element is a prerequisite to the application of EAD Rules Article 10.5. With regard to the standard of proof to be met by the PR, EAD Rules Article 3.1, second sentence stipulates that the PR has to establish "*specified facts or circumstances*" "*by a*

*balance of probability*". The Tribunal takes note that the investigations conducted by the Equestrian Association Veszprém did not provide any answer as to the question of the source of the Prohibited Substances. Further, considering the above standard, the PR's conjectures about the contamination with oleander plants do not meet the burden of proof required by EAD Rules Article 3.1. The Tribunal further holds that the explanations by the PR about the use of Domosedan on the Horse prior to the competition were only likely to explain the presence of Detomidine, but not the presence of Reserpine or Acepromazine in the Horse's system. That however in light of the small dose of Domosedan administered to the Horse and the short detection time of two (2) days, even the source of the Detomidine was not established by a *"balance of probability"* as required under EAD Rules Article 3.1. The Tribunal therefore holds that the PR has failed to meet the requirements that would allow the Tribunal to eliminate or reduce the otherwise applicable sanctions by virtue of EAD Rules Articles 10.5.1 and 10.5.2.

18. Moreover, even if the PR had established how the Prohibited Substances entered the Horse's system, the Tribunal holds that he did not demonstrate that he bore *"No Fault or Negligence"* or *"No Significant Fault or Negligence"* for the positive findings. Specifically, the PR should have ensured that his Horse would not be at risk of ingesting Prohibited Substances. Persons Responsible have to ensure that all precautions are taken to be certain that their horses participate in international competitions without Prohibited Substances. The Tribunal therefore considers that the PR has acted negligently in performing his duties as a competitor and Person Responsible. Furthermore, with regards to the alleged lack of stable security the Tribunal takes note that the PR did not complain about insufficient security at the time of the Event or within a reasonable time thereafter, but only raised this issue as a supposed defence to his anti-doping violation. That independently thereof, according to VRs Article 1005.2.4 and GRs Article 118.6, any alleged lack or insufficiency of stable security does not relieve the PR from his responsibility as rider and competitor.
19. In determining the appropriate sanctions in this case, the Tribunal takes into account that in accordance with EAD Rules Article 10.7.5., the PR shall be treated as having committed one EAD Rule violation. However, the Tribunal considers the presence of three (3) Prohibited Substances as a potential aggravating circumstance in accordance with EAD Rules Articles 10.7.5 and 10.6. The Tribunal is not aware of any mitigating circumstances to be taken into consideration.
20. According to EAD Rules Article 9, a violation of the EAD Rules in connection with a test in a given Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained in that Competition.

21. According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.8 Disqualification**

22. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR from the Competition and all medals, points and prize money won at the Event must be forfeited, in accordance with EAD Rules Article 9.

#### **4.9 Sanctions**

23. Under the newly promulgated Equine Anti-Doping and Controlled Medication Regulations, the sanction for an Adverse Analytical Finding for a Banned Substance is a two-year Ineligibility period. The FEI Tribunal therefore imposes the following sanctions on the PR, in accordance with Article 169 GRs and EAD Rules Article 10:

- 1) The PR shall be suspended for a period of **two (2) years** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 24 August 2010 to 20 June 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 23 August 2012.
- 2) The PR is fined **CHF 3,000.-**.
- 3) The PR shall contribute **CHF 2,000.-** towards the legal costs of the judicial procedure.

#### **5. DECISION TO BE FORWARDED TO:**

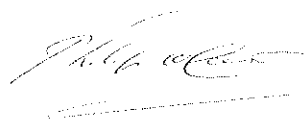
**5.1 The person sanctioned: Yes**

**5.2 The President of the NF of the person sanctioned: Yes**

**5.3 The President of the Organising Committee of the Event through his NF: Yes**

**5.4 Any other: No**

**FOR THE PANEL**



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**THE CHAIRMAN Philip O'Connor**