

DECISION of the FEI TRIBUNAL

dated 18 October 2021

(FEI Case Number: [REDACTED] & 2020/BS03 BOUZARIKA)

FEI Tribunal Hearing Panel:

Mr. Cesar Torrente (COL)

FEI Tribunal Reference: C21-0017

Horse/Passport: [REDACTED] & BOUZARIKA/106RJ34/JOR

Person Responsible/ID/NF: [REDACTED]

Person Responsible/ID/NF: Mohammad SAID/10040466/JOR

APR/Trainer/ID/NF: Khldoon MOHD AL SAYED/10014556/JOR

Event/ID: CEI1* 80 – Wadi Rum (JOR), 2019_CI_1688_E_S_01

Date of Event: 13-14.11.2019

Prohibited Substance: Strychnine

Bar Code Nos.: 5588192 & 5588194 respectively

I. Summary of the Facts:

1. Memorandum of case: By Legal Department.

2. Case file: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and during the hearing.

3. Hearing: 15 June 2021 at 2.30 pm (Central European Time by videoconference (via Cisco WebEx).

Present

- The FEI Tribunal Panel, Mr. Cesar Torrente (COL)
- Ms. Hilary Forde, FEI Tribunal Clerk

APR (FEI Registered Trainer):

- Mr. Khldoon MOHD AL SAYED

For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel

II. Factual background

1. Mr. Khldoon MOHD AL SAYED (FEI ID 10014556) (JOR), was the registered Trainer of the two Horses [REDACTED] and BOUZARIKA (106RJ34) **(the Horses)** at the time of the Event and is the Additional Person Responsible **(the APR)**.
2. The Fédération Equestre Internationale **(the FEI and together with the PR and APR, the Parties)**, is the sole IOC recognised international federation for equestrian sports. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
3. The APR was the registered Trainer of the Horses which competed with the riders Mr. [REDACTED], and Mr. Sameh FARIS MOHAMMAD SAID (JOR) (10040466) **(the PRs)**, at the CEI1* 80 – Wadi Rum (JOR), 2019_CI_1688_E_S_01 on 13-14 November 2019 **(the Event)**.

4. Blood and Urine samples were collected from the Horses on 14 November 2019 and sent to the FEI approved laboratory, the Hong Kong Racing Laboratory (**the Laboratory**) in Sha Tin, Hong Kong, China, for analysis. The Horse's samples were divided into an "A sample" and "B sample", collectively (**the Samples**) with reference numbers 5588192 and 5588194 respectively and the Laboratory analysed the Horses' A samples and reported two adverse analytical findings (**AAFs**) for Strychnine in the Horses.
5. Strychnine is an alkaloid and a toxic substance which causes muscular convulsion and is used as a rodenticide. It is classified as a Banned Substance under the 2019 FEI's Equine Prohibited Substances List.
6. The positive finding of Strychnine in the Horses' samples gave rise to an Anti-Doping Rule Violation under the FEI Equine Anti-Doping and Controlled Medication Rules (**the EADCMRs**). In particular, the EADCMRs applicable to these proceedings were adopted by the General Assembly in November 2018 and came into force on 1 January 2019. They apply to *'each Person Responsible and their Support Personnel by virtue of their membership in, accreditation by, or participation in the FEI or National Federation, or in their activities, Competitions or Events'*.¹
7. Most relevantly for present proceedings, Article 2.1 of the Equine Anti-Doping Rules (**the EADRs**) prohibits *'The presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample'*. In addition, under Article 2.2 of the EADRs, the *'Use or Attempted Use of a Banned Substance or Banned Method'* is prohibited.
8. According to the FEI General Regulations (GRs) Article 118.3, *'the Person Responsible (PR) shall be the Athlete who rides, vaults or drives the Horse during an Event'*, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse.
9. Furthermore, in the discipline of Endurance 'the "Trainer" is defined as the person who is in charge of the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate

¹ Introduction to the EADCMR at p 2.

veterinary care and the administration of therapeutic substances under veterinary advice.' (Art. 800 of the Endurance Rules)²

10. Due to the above specificities of the Endurance discipline with Trainers making relevant decisions about their horses, a Trainer is always regarded as an APR in accordance with Art. 118.3 of the General Regulations.³

Registration of Trainers in Endurance

11. The FEI confirmed that as a prosecutor they relied on the FEI database system through which Athletes, Trainers, Officials, Owners etc. are registered with the FEI. The registration system allows the FEI to hold registered people accountable in case of violations of the FEI Rules and Regulations. Moreover, by registering in the FEI Database as a Trainer, the registered person acknowledges and accepts the definition of a Trainer as per Article 800 of the FEI Endurance Rules. Namely, persons registering as Trainers are to be the persons who are responsible for preparation of the Horse both physically and mentally for Competition.
12. The FEI submitted that once a person is registered as a Trainer in the FEI database he/she is irrefutably presumed to be the person that is responsible for taking relevant decisions on the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice as per Article 800 of the Endurance Rules.

The FEI noted the responsibility of this position was further confirmed in the FEI Tribunal Decision dated 25 June 2020 in the case 2019/FT07 and 2019/CM08 CASTLEBAR CADABRA and 2019/CM06 VAGABON DE POLSKI where the Tribunal stated the following (paragraph 9.6): 'In casu, therefore, if the Trainer accepted to be registered for 154 horses in 2019, he is presumed to have accepted pursuant to Article 800.3-4 of the ERs to be "the person who is in charge of the preparation of the Horse both physically and mentally for Competition(...)", and therefore he is presumed to have made relevant decisions about these horses, including the Horses in question. The Tribunal would expect that if a trainer does not carry out all tasks himself, he puts procedures in place to be informed and oversee all decisions regarding the horses he is the registered trainer for. Ultimately however, when registering as trainer for a horse, or a number of horses, this person accepts the responsibilities which come with such a registration, i.e., to be considered as additional Person Responsible pursuant to the GRs and EADCMRs. The Tribunal finds that the provision in the ERs, defining the role of the Trainer, has been precisely put in place

² 9th Edition, effective 1 February 2019.

³ 23rd edition, 1 January 2009, updates effective 1 January 2019.

in order to avoid the arguments made by the Trainer, namely that he was not responsible and did not take any relevant decisions for the Horses in question. In the view of the Tribunal this provision has been put in place because the FEI expects trainers to take responsibility for all horses they train, regardless of the number of horses, as well as the decisions which might be made by others, such as veterinarians and grooms. And the reason for that is to safeguard the welfare of the horses, one of the statutory aims of the FEI.'

13. Consequently, the FEI confirmed that the registered Trainer in these proceedings was considered the APR and was responsible for any implications in respect of EADCMRs violations.

Background of the Endurance Discipline

14. The FEI also provided background to the Endurance discipline in their submissions and stated that this discipline is often revolved around large stables with over 500 horses and employed professional trainers. Thus, the day-to-day care of the horses was the responsibility of the trainers, as they are the ones managing the veterinarian treatments, feeding regime, farrier visits, training and competition schedules of the horse. The horses are therefore under direct or indirect care of the Trainers.
15. Additionally, the FEI noted that in competition, the horses are often ridden by riders who have very little prior contact/knowledge if any, in respect of the horses selected for use in competition. The FEI explained that the riders are paid per competition and are rarely employed by the stables so they would not be over familiar with the horse they are paired with.
16. Accordingly, as a result of the arrangement in respect of the rider/trainer relationship in managing the horses, the FEI also regarded the trainers in Endurance as the persons taking relevant and concrete decisions about their horses such as:
 - which feed and supplements (if any) is being fed to the horse;
 - shoeing type and cycle;
 - choice of the veterinarian;
 - veterinarian treatments including any administration of medications;
 - training regime and exercise program;
 - competition schedule.
17. The FEI regarded the latter decisions (listed at paragraph 16) as those which have important implications from an anti-doping perspective, and

which dictate whether or not a horse will be involved in a violation of the EADCMRs.

18. In this regard, the FEI again referred to the FEI Tribunal Decision dated 25 June 2020 in the case 2019/FT07 and 2019/CM08 CASTLEBAR CADABRA and 2019/CM06 VAGABON DE POLSKI which confirmed that the trainers in Endurance indeed take relevant decisions regarding horses they are registered for: *'9.8 For the avoidance of any doubt, the Tribunal does not agree with the Trainer's argument that Trainers in Endurance had to be in addition also expressly listed in Article 118.3 of the GRs, as is the case for lungers, in order to be considered as additional Persons Responsible. The Tribunal comes to this conclusion as Article 800.3-4 of the ERs leaves no doubt that Trainers in Endurance, by definition, take decisions with regard to horses they are the registered Trainers for, and thus they fulfil the requirement of Article 118.3 of the GRs.'*

III. Initial Proceedings

19. On 13 January 2020, the FEI Legal Department officially notified the APR through the National Federation of the Jordan **(the JOR-NF)** and the National Federation of Saudi Arabia **(KSA-NF)**, of the presence of the Prohibited Substance in the sample collected at the Event from the Horses and the potential consequences **(the Notification Letter)** based on the Laboratory's AAFs of Strychnine in the samples of the Horses. In accordance with Article 7.4.1 of the Equine Anti-Doping Rules **(the EADRs)**, the Notification Letter also included notice that the APR was provisionally suspended as of 13 January 2020 from participation in any FEI or National Federation organised Events until further notice and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal **(the Tribunal)** pursuant to Article 7.4.4 of the EADRs. The APR was also reminded that he was prohibited from training any horses or from having any horses under his direct or indirect care.
20. In the Notification Letter of 13 January 2020, the PR was also informed of his right to request an analysis of the Horse's B sample in accordance with Article 7.1.4 (c) of the EADRs. However, the PR did not request this option and by failing to issue this request his right was therefore waived.

IV. Summary of Legal Authority

A. Articles of the Statutes/Regulations which are, inter alia, applicable:

Statutes 24th edition, effective November 19th, 2019 **(the Statutes)**, Arts. 1.5, 38 and 39.

General Regulations, 24th edition, January 1st, 2020, Arts. 118, 143.1, 159, 164, 165 and 167 **(the GRs)**.

Internal Regulations of the FEI Tribunal, 3rd Edition, March 2nd, 2018 **(the IRs)**.

FEI Equine Anti-Doping and Controlled Medication Regulations (**EADCM Regulations**), 2nd edition, changes effective January 1st, 2019. The EADCM Regulations are comprised of the equine anti-doping rules **(the EAD Rules)** in the first half and the equine controlled medication rules **(the ECM Rules)** in the second half.

FEI Equine Anti-Doping Rules **(the EAD Rules)**, 2nd edition, changes effective January 1st, 2019.

FEI Veterinary Regulations **(the VRs)**, 14th edition 2018, effective January 1st, 2020, Arts. 1055 and seq.

FEI Endurance Regulations **(ERs)** 9th edition, effective February 1st, 2019.

FEI Code of Conduct for the Welfare of the Horse.

B. Justification for sanction:

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

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

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 – 2.8 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."

EAD Rules Art. 3.1: "Burdens and Standards of Proof. The FEI shall have the burden of establishing that an EAD Rule violation has occurred. The standard of proof shall be whether the FEI has established an EAD Rule violation to the comfortable satisfaction of the Hearing Panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these EAD Rules place the burden of proof upon the Persons Responsible and/or member of their Support Personnel to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except where a different standard of proof is specifically identified".

EAD Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

EAD Rules Art. 10.7: "If the FEI establishes in an individual case involving an EAD Rule violation other than violations under Article 2.7 that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years unless the Person Responsible and/or member of the Support Personnel can prove to the comfortable satisfaction of the FEI Tribunal that he/she did not knowingly commit the EAD Rule violation. The occurrence of multiple substances or methods may be considered as a factor in determining aggravating circumstances under this Article 10.7. The Person Responsible and/or member of the Support Personnel can avoid the application of this Article by admitting the EAD Rule violation as asserted promptly after being confronted by the FEI with the EAD Rule Violation".

EAD Rules Art. 10.8.4.1: "For purposes of imposing sanctions under Article 10.8, an EAD violation will only be considered a second violation if FEI can establish that the Athlete or other Person committed the second EAD Rule violation after the Person Responsible or other Person received notice pursuant to Article 7, or after FEI made reasonable efforts to give notice of the first anti-doping rule violation. If FEI cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction".

ENDURANCE RULES 800.3: "the "Trainer" is defined as the person who is in charge of the preparation of the Horse both physically and mentally

for Competition”.

ENDURANCE RULES 800.4: “Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate Veterinary care and the administration of therapeutic substances under Veterinary advice”.

V. The Parties’ Submissions

The Submissions of the APR

21. The FEI confirmed they did not receive any reply to the EADR charges from the APR of the Horses. The FEI also sent another email to the APR (via the JOR-NF on 4 March 2021) and reminded the APR to submit his explanations for the AAF by 18 March 2021, but no information was ever provided by the APR in respect of these proceedings. In addition, no further explanations were provided by the PRs of the respective Horses to explain their reason for the positive finding of Strychnine.

Written Response of the FEI

22. In respect of the violation of the EADRs of the APR, the FEI noted that Article 3.1 of the EADRs makes it the FEI’s burden to establish all the elements of the EADR violation charged, to the comfortable satisfaction of the FEI Tribunal. Furthermore, the FEI stated that the elements of Article 2.1 violation are straightforward, that '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'. Instead, it is a 'strict liability' offence, established simply by proof that a Banned Substance was present in the Horse's Sample.
23. As such, the FEI confirmed that the results of the analysis of the A Sample taken from Horses at the Event confirmed the presence of Strychnine and thus constituted sufficient proof of the violation of Article 2.1 of the EADRs.
24. The FEI also noted that in any event, that the APR did not dispute the presence of Strychnine in the Horses’ Sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the APR had violated Article 2.1 of the EADRs.

Presumption of fault

25. The FEI furthered that as a result of the presumption of fault pursuant to Article 10.2 of the EADRs wherein it is provided that an APR with no previous doping offences who violates Article 2.1 of the EADRs is subject

to a period of Ineligibility of two years, unless he is able to rebut the presumption of fault. In order to do this, the FEI noted that the rules specify that he/she must establish to the satisfaction of the Tribunal (it being his/her burden of proof, on the balance of probability⁴):

- How the Prohibited Substance (here, Strychnine entered into the horse's system; and
 - That he/she bears No Fault or Negligence for that occurrence, i.e., that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had administered to the horse (or the horse's system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EADRs); or
 - That he/she bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced, depending on his degree of fault, pursuant to Article 10.5 of the EADRs).
26. The FEI noted that if the APR fails to discharge this burden, the presumption of fault stands, and therefore the two-year ban under Article 10.2 of the EADRs is the applicable sanction in this respect.

The 'threshold' requirement: proving how the Strychnine entered into the Horse's system

27. The FEI then addressed the threshold requirement in respect of the stipulations of the EADRs, the jurisprudence of the FEI Tribunal and also the CAS which clearly regard that: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the APR proves how the substance entered into the Horse's system.
28. The FEI also noted that this requirement must be strictly applied because without such proof it would be impossible to assess the APR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Horse.
29. The FEI submitted that in this context the APR must provide clear and convincing evidence proving how the Strychnine entered the Horse's system.
30. In this case, the FEI noted that the APR did not submit any explanations or documentary evidence in response to the charges as to how Strychnine

⁴ Art 3.1 EADR.

entered the Horses' systems until the day of the hearing on 15 June 2021 where he made assertions about the poor quality of the drinking water supplied for the Horses at the Event.

31. However, given the lack of written evidence or explanations of the source of Strychnine, the FEI submitted in their response to the Tribunal that the APR had not established how the Prohibited Substance entered the body of the Horses and the "threshold requirement" was not fulfilled in this case.

Fault/Negligence for the rule violation

32. In relation to the terms of the degree of Fault and Negligence by the APR for the rule violation, the FEI outlined how the starting point of any evaluation is the "*personal duty*" of the APR following from Article 2.1.1 of the EADRs, i.e., his personal duty to ensure that "*no Banned Substance is present in the Horse's body*".
33. Furthermore, the FEI noted that it is necessary to look at the definitions of *Fault*, as defined in Appendix 1 of the EADCMRs which states the following:

"Fault is any breach of duty or any lack of care appropriate to a particular situation ...the degree of risk that should have been perceived by the Person Responsible and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk... In assessing the Person Responsible's degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's departure from the expected standard of behaviour."

"No fault - The Person Responsible establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse's system otherwise contained, a Banned or Controlled Medication Substance."

"No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation... the Athlete must also establish how the Prohibited Substance entered the Horse's system."

34. The FEI further highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse⁵. It is the APR's personal duty to ensure that no Banned Substance is present in the Horse's body.
35. As already noted in paragraph 31 of the Decision, the FEI stated that the APR failed to establish how the Prohibited Substance Strychnine entered the Horses' systems. Consequently, they submitted that it is therefore not possible to evaluate the degree of the APR's level of Fault or Negligence based on the applicable rules.

Prior violations / Aggravating circumstances

36. The FEI highlighted that the APR in this case was responsible for two AAFs in two different Horses, at the same Event. The FEI also confirmed that the APR was notified of the two AAFs on the same day, hence those two AAFs shall be considered together as a first single violation in accordance with 10.8.4.1 EADR. As a result, Article 10.8 of the EADRs ("Multiple Violations") cannot be applied and the present Rule Violation since it shall be considered as the Trainer's first Rule Violation.
37. However, the FEI noted that the APR was the registered Trainer of two Horses involved in an EADR violation i.e. "*The presence of a Banned Substance Substance and/or its Metabolites or markers in a Horse's sample*". Given his status as the registered Trainer the FEI confirmed that he was responsible for the conditioning of those Horses for the Competition which involves the exercise programme, nutrition of the Horses, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice. Thus, the FEI concluded that it appeared that at minimum, the Trainer had not established a well-functioning anti-doping system for the prevention of AAFs under the EADCMRs, since several Horses trained by the APR tested positive for the same Banned Substances, Strychnine.
38. Consequently, the FEI considered the points raised at paragraph 37 as aggravating circumstances which justified the imposition of a higher sanction, in accordance with Art 10.7 of the EADRs.
39. Finally, the FEI concluded that it was for the discretion of the Tribunal to decide whether it wished to impose a higher sanction than the standard two (2) years on the APR.

Disqualification of results

⁵ Veterinary Regulations Article 1055.

40. The FEI did not submit any request for the disqualification of results obtained by the APR and Horses combination at the Event as this has been requested in the procedure against the PRs.

VI. Further Proceedings

41. By email dated 31 March 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel.
42. On 26 April 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to decide this case. The Parties were asked to provide any objections to constitution of the hearing panel by 29 April 2021. The APR was also granted the opportunity to respond to the FEI's allegations by submitting his respective position by 19 May 2021. The APR was also informed that the Tribunal will generally decide such cases based on written submissions however the Parties were informed that they had the right to request an oral hearing by 24 May 2021, failing which the right for an oral submission would be deemed as waived.
43. On 26 April 2021, the FEI informed the Tribunal that they did not have any objections to the constitution of the hearing panel.
44. On 27 April 2021, the PR in this case requested an oral hearing before the Tribunal. The APR did not request an oral hearing but as explained in Chapter IV. of this Decision, he attended the oral hearing requested by the PR.
45. On 10 May 2021 the following statements were presented via email to the Tribunal:
- (i) A letter from the JOR-NF⁶, confirming that the PR had no intentions or plans to ride the Horse until 3 days before the Event;
 - (ii) A letter from the APR⁷ confirming that the Horse Bouzarika was fully under his supervision and control since 20 September 2019 and that the PR did not encounter the Horse until the day before the Event.
46. On 8 June 2021, the Tribunal wrote to the Parties and confirmed the hearing on the 15 June 2021 at 2.30pm (Central European Time GMT+1).
47. On 9 June 2021, the FEI, PR and APR confirmed their attendance for the hearing on 15 June 2021.

⁶ Statement dated 9 May 2021 from the JOR-NF.

⁷ Letter dated 10 May 2021 from the APR.

IV. Hearing.

48. During the hearing, the Parties had the opportunity to present their cases, submit their arguments and answer the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision. The Tribunal took into consideration in its deliberation all the evidence and the arguments presented by the Parties even if they may not all be summarised here.
49. During the hearing, the Parties acknowledged that the Tribunal had respected their right to be heard and their procedural rights.
50. During the hearing both Parties maintained their previous positions. However, at the hearing, the APR submitted an additional explanation for the AAF as he claimed that the drinking water for the horses at the Event ran out and the management of the Event used stand-by water from drinking tanks. The APR stated that this water was not suitable drinking water for the horses, and he even saw dead mice near the water. The panel asked the APR if he had any evidence to support these assertions, and the APR further stated that while he had no documents to support these claims regarding the unsuitability of the water, the APR alleged he had heard from local civil authorities that this water was not suitable and that 80% of the horses that participated in this Event did not complete it. The APR also mentioned that he had heard that one horse died after the Event, and many horses from the Event also had to attend the hospital and he suspected that such sicknesses were due to poor drinking water supplied at the Event.
51. During the hearing the FEI noted that despite the PR's lack of knowledge of the Horse he selected to ride, they queried what investigations or enquiries about the Horse the PR made before taking the decision to ride the Horse as this was his responsibility. The PR stated that he had asked the APR if the Horses had had any treatments or medications and the APR said no. He furthered that the Horse looked very healthy and active and he had no concerns when he opted to ride it. The PR and APR also confirmed that they use the FEI Clean Sport Application to keep abreast of any regulatory developments of the FEI Regulations.
52. Taking into consideration the claims made during the hearing regarding the poor quality of the water supplied at the Event, the Tribunal asked the PR and the APR if anyone made contact with the civil authorities in this regard. The APR explained that he raised his concern with the JOR-NF, but he does not have anything in writing to evidence any of these submissions as it was only verbal communication. The APR also stated that there are many witnesses available to confirm his concerns regarding the water quality (which he communicated to the JOR-NF). Taking into

account the seriousness of the assertions made by the APR regarding the water quality, and that this was never mentioned before to the FEI or the Tribunal, the Tribunal decided to suspend the Proceedings and allowed the parties a 2-month period until 15 August 2021 to provide any additional statements (to be provided in English) for a better understanding for the case in respect of the points below:

1. Anyone on site who noticed anything concerning about the water tank and the quality of the water, and or witnessed the change of water tanks;
 2. Anyone who witnessed about the problem/condition of the horses in the ride/after the ride, how many horses went to hospital and what they were treated for;
 3. The veterinarian at the equine hospital, or other person treating the horses after the ride, confirming the horses' conditions and what they were treated for after the ride;
 4. Anyone from the Event organisation or the JOR-NF who can confirm that you discussed there might have been water contamination;
 5. The comments/complaints sent by the APR/PR to the federation (water or other complaints), are they available;
 6. If the medical logbook of the Horses is available;
 7. Should the APR/PR be able to establish that the water was contaminated the FEI will argue no fault and negligence for the APR/PR of the case.
53. Despite this agreement made at hearing by the APR to provide additional information, after the two-month period was completed, no information was ever provided in respect of the points listed at paragraph 52 of this Decision. Therefore, no continued hearing was arranged. The Tribunal regrets that the APR did not provide the additional information as agreed and that at the end the suspension of the proceedings only delayed the issuance of this Decision. As a consequence, the Tribunal must issue a Decision with the evidence, information and particulars supplied to date.

V. Jurisdiction

54. The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs. The APR is a member of the JOR-NF, which is a member of the FEI; therefore, the APR is bound by the EADRs.

VI. The Decision

55. The Tribunal is satisfied that it has been demonstrated, through the submissions of the FEI Legal Department (including the laboratory analysis of the results of the A sample analysis confirming the presence of Strychnine in the Horse) the explanations provided by the PR, the APR, and the particulars covered at the hearing on 15 June 2021) as sufficient proof that a violation of Article 2.1 of the EAD Rules has occurred. Additionally, the Tribunal is satisfied that the laboratory reports relating to the A sample reflect that the analytical tests were performed in an acceptable manner and the findings of the laboratory are accurate. Besides, the APR did not challenge the accuracy of the test results or the positive findings.
56. As confirmed by various CAS panels as well as jurisprudence of the FEI Tribunal, the APR must present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the APR. The APR's scenario must reach a 51% threshold for it to be successful.⁸ However, as previously detailed at paragraph 50 of this Decision, the APR firstly never mentioned any explanation for the source of the Strychnine in the course of the proceedings, yet submitted an possible explanation for the AAF on the day of the hearing (15 June 2021) wherein he claimed that the drinking water for the horses at the Event ran out and the management of the Event used stand-by water from drinking tanks that was contaminated. However, no evidence was ever provided to support these claims, and despite the Tribunal granting a 2-month suspension of the proceedings in order to allow for the additional statements to be provided for a better understanding of the APR's assertions, nothing was ever submitted by the APR (as listed at paragraph 52 of this Decision).
57. Consequently, without any supporting evidence, the Tribunal confirms that the APR failed to establish how Strychnine entered the Horses' system. It is therefore not possible to evaluate the degree of the APR's level of Fault or Negligence based on the applicable rules.
58. Furthermore, , the Tribunal concludes that in accordance with Article 2.1.1 of the EADRs which states that "[i]t 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", which for the purpose of these

⁸ See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also Case 2017/BS32 SAURA DE FONDCOMBE, Final Tribunal Decision dated 24 February 2020.

proceedings is the responsibility of the APR, accordingly, the charge that the APR violated Article 2.1 of the EADRs is upheld.

VII. SANCTIONS.

59. The Tribunal notes that pursuant to Article 10.2 of the EADRs, "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years", unless the APR was able to rebut the presumption of fault in this case, which has not been demonstrated in these proceedings.
60. Moreover, the Tribunal must take into account the aggravating circumstances present in this case, i.e., that the APR is the registered Trainer responsible for two AAFs in two different Horses, at the same Event, *"The presence of a Banned Substance and/or its Metabolites or markers in a Horse's sample."* Additionally, as the Trainer he was responsible for the conditioning of those Horses for the Competition which involves the exercise programme, nutrition of the Horses, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice. Nonetheless, the Tribunal considers the return of AAFs in both Horses as indicating that the Trainer does not have a safe and effective anti-doping infrastructure in place to prevent such AAFs.

As such and bearing in mind the APR's lack of follow-up to provide evidence despite the APR requesting a suspension to the Tribunal's proceedings in June 2021 thereby causing an unnecessary delay, and in accordance with Article 10.7 of the EADRs wherein it states that; "Aggravating Circumstances Which May Increase the Period of Ineligibility, If the FEI establishes in an individual case involving an EAD Rule violation other than violations under Article 2.7 that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years unless the Person Responsible and/or member of the Support Personnel can prove to the comfortable satisfaction of the FEI Tribunal that he/she did not knowingly commit the EAD Rule violation". Taking the latter into account, the Tribunal imposes a higher sanction of three (3) years Ineligibility period on the APR. Additionally, as a result of these aggravating factors noted in this Decision, the status of the APR's Ineligibility shall include the full sanction pursuant to the Articles 10.11.1 and Article 10.11.13 of the EADRs which are detailed in full at Section VIII points f and g.

61. With respect to the fine to be imposed, the FEI Guidelines for Fines and Contributions towards Legal Costs provide that "[t]he FEI Tribunal must

always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining appropriate fines and contributions to legal costs in every case. In addition, regardless of whether the fines and contributions to legal costs are within or outside of the range stated in the Guidelines, the FEI Tribunal must explain the basis for the fines and contributions to legal costs imposed". In this regards, the Tribunal notes that pursuant to Article 10.2 of the EADRs, for a violation of an article 2.1, a Person Responsible/Additional Person Responsible shall be fined up to fifteen thousand (15'000) CHF and appropriate legal costs shall also be imposed. Consequently, taking into consideration all circumstances of the present case, the Tribunal considers that a fine of seven thousand five hundred Swiss Francs (CHF 7,500) is appropriate in this case.

62. Finally, with respect to the costs of the proceedings, given that the APR extended the proceedings and created a halt to the proceedings and further administration for all parties, the Tribunal concurs with the FEI and orders the APR to pay the legal costs of two thousand Swiss Francs (2,000 CHF).

VIII. Sanctions

- a. In summary, the Tribunal imposes the following sanctions on the APR in accordance with Article 169 of the GRs and Article 10 of the EADRs:
- b. upholds the charge that the APR has violated Article 2.1 of the EADRs;
- c. imposes a period of Ineligibility of three (3) years on the APR. The period of the Provisional Suspension, effective from 13 January 2020 is credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible until 12 January 2023;
- d. the APR is fined in the amount of **seven thousand five hundred Swiss Francs (7,500 CHF)**; and
- e. the APR will contribute **two thousand Swiss Francs (CHF 2,000)** for costs that the FEI has incurred in these proceedings.
- f. No APR who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation or any elite or national-level sporting activity funded by a governmental agency. In addition, for any

EAD Rule violation, some or all of sport-related financial support or other sport-related benefits received by such Person Responsible and/or Support Personnel may be withheld by the FEI and/or its National Federations. A Horse subject to a period of Ineligibility shall remain subject to Testing.

In addition, any Person Responsible and/or member of the Support Personnel or Horse subject to Ineligibility under Article 10 may also be banned from any venues where FEI competitions are taking place, whether or not the Person Responsible or member of the Support Personnel is registered with the FEI. (Article 10.11.1 of the EADRs).

- g.** Where an APR who has been declared Ineligible, violates the prohibition against participation or attendance during Ineligibility, the results of any such participation shall be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.13 of the EADRs).
- h.** According to Article 168 of the GRs, the present decision is effective from the day of the written notification to the Parties concerned.
- i.** This Decision is subject to appeal in accordance with Article 12.2 of the EADRs. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- j.** This Decision shall be notified to the APR, the JOR-NF and to the FEI.
- k.** This Decision shall be published in accordance with Article 13.3 of the EADRs.

FOR THE FEI TRIBUNAL

A handwritten signature in blue ink, appearing to read 'Torrente', with a large, stylized initial 'T'.

Mr Cesar Torrente, One-Member Panel