

DECISION of the FEI TRIBUNAL  
dated 19 April 2021

Case 2020/HA01 Mr Leandro APARECIDO DA SILVA – Allegation of Horse Abuse by the Respondent

I. COMPOSITION OF PANEL

Mr Jose A. Rodriguez Alvarez (MEX), Chair  
Ms Harveen Thauli (CAN), Member  
Ms Diane Pitts (USA), Member

II. SUMMARY OF THE FACTS

1. **Claim Brief:** By FEI Legal Department.
2. **Summary information provided by the Respondent:** The Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the Respondent.
3. **Oral hearing:** none.

III. Summary of Legal Authority

1. **Articles of the Statutes/Regulations which are applicable:**

Statutes 24<sup>th</sup> edition, effective 19 November 2019 (“**Statutes**”), Arts. 1.4 and 38.  
General Regulations, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 142, 159, 163, 164 and 167 (“**GRs**”).

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018, Part III (Procedural Rules of the FEI Tribunal) (“**IRs**”).

FEI Code of Conduct on the Welfare of the Horse.

2. **Respondent:** Mr Leandro Aparecido Da Silva (FEI ID 10027780).

### 3. Authority for Sanction:

**GRs Article 142.1:** No person may abuse a Horse during an Event or at any other time. "Abuse" means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to:

- (i) To whip or beat a Horse excessively;
- (ii) To subject a Horse to any kind of electric shock device;
- (iii) To use spurs excessively or persistently;
- (iv) To jab the Horse in the mouth with the bit or any other device;
- (v) To compete using an exhausted, lame or injured Horse;
- (vi) To "rap" a Horse.
- (vii) To abnormally sensitise or desensitise any part of a Horse;
- (viii) To leave a Horse without adequate food, drink or exercise;
- (ix) To use any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle.

### **GRs Article 159.2:**

"The FEI Tribunal may impose the following sanctions, or, where appropriate, delegate the ability to do so to the FEI Secretary General and/or the FEI Legal Department:

- b) A fine, taking into account the FEI Guidelines for Fines and Contributions towards Legal Costs;

[...]

- e) Suspension of individuals and Horses for any period up to Suspension for life;"

### **GRs Article 164.1 (Types of Sanctions):**

"The Sanction(s) imposed in any given case can consist of any of the Sanctions set out in Articles 164.2 – 164.10 below. The level of the Sanction shall be decided according to the guidelines mentioned in Article 164.13 below and to the circumstances of the case."

#### **GRs Article 164.5 (Fine)**

«(a) A fine is appropriate particularly in cases where the offender has acted negligently [...]»

#### **GRs Article 164.7 (Suspension):**

- a) “During the period of a Suspension the person, Horse or body suspended may take no part in Competitions or Events as an Athlete, Horse or Official or in the organisation of, any Event under the jurisdiction of the FEI or any Event under the jurisdiction of an NF in accordance with the Statutes or in any FEI related activity (e.g. FEI courses, meetings, General Assembly etc.).
- b) If so specified in the relevant Notification/Decision, the person may be barred temporarily or for a specific period of time from participating in or attending, in any capacity, including as a spectator, any Competition or Event that is authorised or organised by the FEI or any National Federation.
- c) The Suspension may be provisional or final and may be imposed on such terms and subject to conditions as the FEI Tribunal, the FEI Headquarters or the FEI Secretary General, as the case may be, may impose. In certain cases a Provisional or Final Suspension may be automatic under the Statutes, GRs or Sport Rules.
- d) As a general principle, a Suspension will start as of the date of notification of the Suspension. However, the body imposing or applying the Suspension may postpone the start date of the Suspension in order to ensure the effectiveness of the Suspension.”

#### **GRs Article 164.13 (General Sanctioning Principles and Tables of Sanctions):**

“In deciding on the appropriate sanctions to be imposed and whether to categorise the offence in question as “low-end”, “mid-range”, “top-end” or “max”, the body imposing the Sanction shall consider the following factors, together with any other relevant factors:

- a) Whether the action or omission resulted in an unfair advantage to the offender or an Athlete.
- b) Whether the action or omission resulted in a material disadvantage to any

- other person or body involved.
- c) Whether the action or omission involved the maltreatment of Horses.
- d) Whether the action or omission affected the dignity or integrity of any person involved in the sport.
- e) Whether the action or omission involved Fraud, violence or abuse or similar criminal acts.
- f) Whether the action or omission was deemed to be deliberate.”

**GRs Article 164.14:**

“The following table sets out the sanctions that will apply for certain offences listed in Article 164.12 above. Where an offence is not listed in the table below, general sanctioning power will apply and sanctions may be imposed in accordance with this Article 164.

[...]

Offence	Low-End	Mid-Range	Top-End	Max
Abuse of Horse	3 months	3 months – 2 years	2 – 5 years	Life
	CHF 1000 – 1,500	CHF 2,000 – 3,000	CHF 5,000 – 10,000	CHF 15,000

[...]

Offence	Low-End	Mid-Range	Top-End	Max
Criminal Acts, Fraud, Violence	1 month	3 months – 2 years	2 – 5 years	Life
	CHF 1000 – 1,500	CHF 2,000 – 3,000	CHF 5,000 – 7,500	CHF 10,000

**IV. DECISION**

Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions and evidence. Although the Tribunal has fully considered all the facts, allegations, and arguments in the present proceedings, it refers only to the submissions and evidence it considers necessary to explain its reasoning in this decision.

## 1. Factual Background and Charges by the FEI

- 1.1 Mr Leandro Aparecido Da Silva (the “**Respondent**”, and together with the FEI, the “**Parties**”) is an international-level athlete, who has been involved in equestrian sport for more than 20 years, participating *inter alia* in the 2008 Beijing Olympic Games, the 2014 South American Games and the 2018 FEI World Equestrian Games, as an experienced rider for the Brazilian Team.
- 1.2 On 15 July 2020, the FEI was made aware of a video posted on social media on 14 July 2020, “*wherein the Respondent is seen riding a small Pony, jabbing his mouth with the bit and excessively pulling on the reins*”.
- 1.3 Upon request from the FEI, the Brazilian National Federation (“the **BRA-NF**”) indicated that the case would be adjudicated before the Tribunal of the Brazilian Equestrian Sport. Said Tribunal issued a decision on 17 September 2020, concluding it lacked jurisdiction to hear the case, since the allegations brought against the Respondent happened at his private farm, and not during a competition.
- 1.4 The FEI thus decided to open disciplinary proceedings against the Respondent. On 19 October 2020, the FEI sent a Notification Letter to the Respondent in which he was informed of the opening of disciplinary proceedings for alleged horse abuse in accordance with Art. 30 of the IRs, and Art. 142 and 164.12 of the GRs, with a short summary of the facts and evidence gathered. The Respondent was further informed that the proceedings also related to possible Criminal Acts, in accordance with Art. 164.12 of the GRs. Administrative measures, in application of Art. 30.2 (a) of the IRs, were also offered to the Respondent.

## 2. Procedural Background (as at submission of the case file)

- 2.1 As mentioned *supra*, the FEI sent the Notification Letter to the Respondent on 19 October 2020.
- 2.2 On 9 November 2020, the Respondent submitted an acceptance letter, accompanied by a video. In said video, the Respondent admitted the alleged infringements, and accepted the sanctions proposed by the FEI, i.e. an 18-month suspension and a CHF 2'500. fine. The Respondent requested, however, that the fine be reduced.

- 2.3 Following the Respondent's submission, settlement discussions took place between the FEI and the Respondent, until 10 December 2020.
- 2.4 On 1 December 2020, the Respondent agreed to be suspended provisionally pending a decision of the Tribunal on his case.
- 2.5 On 10 December 2020, the Respondent decided to refuse the FEI's proposed sanctions, and requested that the case be submitted to the Tribunal for adjudication.
- 2.6 As a consequence, the FEI submitted the present case to the Tribunal on 16 December 2020.
- 2.7 On 18 December 2020, the Tribunal acknowledged receipt of the claim submitted by the FEI and informed the Parties of the composition of the three-member Panel appointed for the case, in accordance with Art. 19.1 of the IRs. The Parties were granted a deadline until 23 December 2020 to submit any objections to the constitution of the Panel. Furthermore, the Respondent was required to submit, by 7 January 2021, his position, containing a statement of defence, any defence of lack of jurisdiction, any evidence and substantiated motions for the admission of evidence upon which the Respondent intended to rely, as well as his position on the recommended sanction. Finally, the Respondent was required to notify the Tribunal, within the same deadline, whether he requested a hearing, and to provide a Power of Attorney (PoA) confirming representation, if applicable.
- 2.8 On 22 December 2020, the FEI confirmed that it had no objection to the constitution of the Panel.
- 2.9 On 23 December 2020, at 12:40 (CET time), the Respondent submitted a first email, enclosing 8 documents. Three minutes later, i.e. on 23 December 2020, at 12:43 (CET time), the Respondent sent an additional email, enclosing the same 8 documents. The content of those documents will be summarised below, under Section IV.3.
- 2.10 On 26 January 2021, the Tribunal acknowledged receipt of the FEI's email dated 22 December 2020 and the two emails submitted by the Respondent on

23 December 2020. The Panel noted in this respect that neither Party objected to the constitution of the Panel, which would thus hear the present matter. Furthermore, it was noted that the Respondent did not submit a proper position on the FEI proceedings specifically, nor did he request an oral hearing. Since the FEI had reserved their right to request an oral hearing in their 16 December 2020 Claim Brief, the Parties were requested to confirm, by 29 January 2021 at 5 PM (Swiss time), whether they would like an oral hearing to take place (via videoconference). Finally, the Respondent was requested once more to provide the Tribunal with a PoA.

- 2.11 By email of the same day, the FEI confirmed that they did not request an oral hearing to be held in the present matter.
- 2.12 On 29 January 2021, the Respondent clarified that the documents sent on 23 December 2020 *"should be considered part of this document as if it was written here"*. The Respondent further indicated he was not requesting an oral hearing, since he is not fluent in English. In relation to the PoA, the Respondent clarified that he decided to represent himself (*"opted for self-defense"*) and therefore would not need to submit a PoA. He further indicated he lacked the financial means to hire a legal representative. It is also for financial reasons that he requested that the fine be lowered, alleging receiving 925.00 Reais monthly, which equals 151,24 CHF. The fine would thus equal, according to the Respondent, 16 months of the financial aid he receives from the Government. In support of his request, the Respondent indicated that the minimum salary of both countries (i.e. Switzerland and Brazil) should be compared: in Brazil, the minimum monthly salary is 1,045 Reais, which is roughly 177,58 CHF. The fine in Swiss francs would therefore be around 25 times higher than in Reais. Also, dressage – where the Respondent is active – has no prize money awards in Brazil, which makes it even more difficult to have a financially stable situation. The Respondent therefore concludes that those circumstances should be considered by the Tribunal when deciding the amount of the fine to be imposed on him.
- 2.13 On 15 February 2021, the Tribunal acknowledged receipt of the FEI's email dated 26 January as well as the Respondent's email dated 29 January 2021. The Parties were informed that the Panel noted that the case would therefore consist of the Claim submitted by the FEI on 16 December 2020, and the documents submitted by the Respondent on 23 December 2020. The Tribunal further noted that the

Respondent had decided not to be represented by Counsel in this matter. Finally, since neither Party requested an oral hearing *"in person"*, the Parties were informed that the matter would be under review by the Panel, and that a decision, based on the file, would be notified to the Parties in due course.

2.14 By the end of these proceedings, neither Party requested a hearing.

### 3. Written Submissions by and on behalf of the Respondent

3.1 The Respondent provided his main submission on 23 December 2020 and completed it with some considerations related to the fine on 29 January 2021. As previously stated, the Tribunal will summarise only the most relevant evidence required for this decision.

3.2 The Respondent submitted, in support of his position, a total of eight documents, consisting of English translations of documents originally submitted in Portuguese (according to the notice from the interpreter on top of all documents), which all seem to come from the proceedings that took place in front of the Superior Court of Sports Justice of Brazilian Equestrian (the **"STJD HB"**). The Tribunal notes that the original versions of those documents were not submitted by the Respondent. According to the translations provided, the documents consisted of the following.

- a. The Statement of defence the Respondent submitted in support of his case before the STJD HB on 29 July 2020, which will be summarized below, under Section IV.3.3.
- b. A clinical visit report of the Pony Pirulito, owned by Leandro Aparecido, dated 28 July 2020. This report bears the logo of *M.A.I.S. Veterinary Team*. The reports states that Pirulito was examined on 22 July 2020 and concludes that *"the animal has an excellent body condition score. The animal has no pathology in locomotor limbs. The animal does not present any type of skin lesion. The animal does not present any type of intro or peri-oral cavity injury. The animal shows no sign of contagious infectious diseases"*. Laboratory tests were also performed – possibly on 23 July 2020 – and concluded to the Pony's *"perfect health"*.

c. Minutes of the Respondent's answers to questions asked by the Boituva Police Station, on 11 August 2020. This document bears the coat of arms of the state of São Paulo, and the coat of arms of the São Paulo State Civil Police. At this occasion, the Respondent was assisted by his lawyer, Ms Janaina Ferreira, from the Brazil's National Bar Association. In summary, the Respondent stated the following to the Brazilian Police:

- i. He bought his stud farm three years ago, which is a stable for Horses. This is where the Pony Pirulito was born and raised.
- ii. The Respondent has been dealing with and caring for horses professionally for around 25 years and has as such acquired extensive experience in the training, and treatment, of this type of horses.
- iii. A pony is, despite its small size, a very robust animal and has the proportional strength of a common-sized horse, meaning that it can, usually, bear the weight of an adult. Pirulito is currently 6 years old and is no longer a cub; he can be considered an adult.
- iv. At the Respondent's stud farm, Pirulito is "used" for his children's "recreation" and mainly ridden by the Respondent's daughters as well as children of some of his farm's employees.
- v. Since Pirulito is "surrounded" by children, who pamper and feed him, he is spoiled and therefore started to show signs of disobedience.
- vi. On the date of the facts, the Respondent witnessed Pirulito disobey, so he decided to apply "*the technical correction*" to him, especially after he bit his youngest daughter. According to the Respondent, this latter event showed that Pirulito had lost respect for the children and would no longer obey.
- vii. Thus, the Respondent mounted the animal, and "*applied the desired correction*", without using spurs or a whip. The technique used was called "*half-halt*", i.e. that "*the commands were obeyed when the animal was ridden by the children*". This correction was recorded on the Respondent's son's mobile phone.
- viii. After having applied the correction, Pirulito started to obey again, without hesitation.

- ix. The mouthpiece used for the correction is called an *"eggbutt"* and is considered *"the lightest and mildest mouthpiece for horses without any kind of bit"*.
  - x. The correction was not meant as a punishment for the bite of the Respondent's daughter but was instead used to make sure that Pirulito does not disobey again, so that the children would not get hurt.
  - xi. The Respondent does not consider his acts as animal abuse, under the Brazilian Confederation of Equestrian's regulations, since his actions did not cause any psychological trauma or injury to the animal.
  - xii. With respect to the second video, the Respondent indicated that it is his son who rides the animal and leads it to jump the obstacle.
  - xiii. Throughout his career, the Respondent has never been subject to any disciplinary sanction or suspension.
  - xiv. Since the publication of the video – which was misinterpreted by people who are unaware of the technique used – the Respondent has been receiving several types of threats and suffered a substantial damage to his image as a professional athlete.
  - xv. An asterisk is contained in the document, explaining what the *"half-halt"* technique is: *"application of partial lateral traction of the animal using the rein, this movement being applied several times"*.
- d. An examination report of the Pony Pirulito, owned by Leandro Silva dated 16 September 2020. This report bears the logo of *Henrique Macedo – Clinical Geral e Medicina Esportiva* and concludes that *"the pony cooperated during the clinical examination [...] no signs of damage to the mucosa, tongue or teeth were observed"*.
- e. A veterinary report of the Pony Pirulito, owned by Leandro Aparecido da Silva, dated 16 September 2020. This report bears the logo of *Dr. Christian Carlstron CRMV-SP (Brazil Regional Council of Veterinary Medicine – São Paulo)*. This report states that the Pony was examined on 16 July 2020, at the stud farm in Boituva/SP. The examination

consisted in extraoral examination, intra oral examination and radiographic testing. For the extraoral examination, *"no type of musculoskeletal abnormality was found, as well as no increase in volume, scar or painful region on the animal's face. Bilateral muscle symmetry was observed without the presence of atrophies or hypertrophies"*. With respect to the intra oral examination, *"no abnormality was observed, such as a scar, wound, ulcer or inflammation points either on the tongue, vestibule, lips, bar, lip commissure or palate. No type of sensitivity or painful region was observed inside the oral cavity"*. The veterinarian further observed *"the beginning of enamel tooth points totally correlated and corresponding to the age of the animal, but without causing injuries on the buccal or lingual surfaces"*. Finally, a separate doctor, Dr. Henrique Macedo, performed the radiographic examination in the oral cavity, *"where no radiographic alterations were observed, either dental or bon alterations"*.

- f. Minutes of the Ordinary Session of the Disciplinary Commission of the STJD HB held on 17 September 2020. This document bears the logo of the STJD HB. Despite being summoned, the prosecutors were absent. This case was dealt under reference 2.4 Case No. 1122.341 – Complaint. The Interested Party was the STJD HB Public Prosecutor's Office, and the Lawbreaker Leandro Aparecido da Silva. The result of the meeting was the following: *"the preliminary lack of jurisdiction of sports justice to assess the matter was unanimously accepted"*.
- g. Note of the Judge-Rapporteur dated 17 September 2020, on the STJD HB decision on the Case No. 1122.341 – Sports disciplinary offence, Offender Leandro Aparecido Silva. This report, signed by Bianca Telles Menchise, seems to be the summary of the STJD HB decision, by the Judge-Rapporteur Bianca Menchise. This note summarised the position from the STJD HB Prosecutor against the Respondent, concluding that *"the complaint be received, prosecuted and the request deemed valid to convict Leandro Aparecido Silva, in the penalties provided for in the CBH (Brazilian Equestrian Confederation) regulation [...]"*. The Respondent's position was also summarized, where he concluded to (a) the lack of jurisdiction of the STJD HB to prosecute and judge the charges against him and (b) subsidiarily, dismissal of the complaint based on non-occurrence of any disciplinary offence. The Judge-

Rapporteur concluded in the following terms: *"I accept the preliminary lack of jurisdiction of this court raised by the defence, considering that the alleged disciplinary offence was not committed during a competition, and, therefore, the Superior Court of Sport of Brazilian Equestrian is lacking in jurisdiction to judge this claim, based on art. 24 of the CBJD"*.

- h. A second veterinary report dated 23 September 2020, of the Pony Pirulito. This report bears the logo of *SS Veterinária*. The report states that there were no changes found, and no alteration nor wounds present in the Oral cavity, the labial commissures being preserved. With respect to the behavioural test, the report indicated that *"the animal was comfortable with the handling of local people, showing no signs of aggression with them"*, and *"showed docile behaviour without showing trauma to human contact. He showed no stress addiction inside the stable (wind sucking, bear dancing, kicking the doors...).* When released, the animal followed the child, who rides him, showing confidence in the child".

3.3 The Respondent submitted, in the context of the present proceedings, the position that he had previously remitted on 29 July 2020 before the STJD HB. This statement of defence was submitted in the context of Case No. 1122.341 and addressed to the Judge-Rapporteur Bianca Telles Menchise. Upon request, the Respondent clarified that this was his sole position submitted in the present proceedings. This statement can be summarised as follows.

- The Respondent has been a professional rider for more than twenty years and is currently part of the Brazilian Dressage Team. He has won various titles, been champion in different competitions, and went, among others, to the Beijing Olympics Games in 2008.
- As one of the most experienced riders of the Brazilian Team, the Respondent was, at the time of filling his submission, competing for a spot in the Tokyo Olympics in 2021, *"being one of the favourites"*.
- The Respondent, during all these years, has never committed any disciplinary offence and has an unblemished professional reputation.
- Regarding the facts, the Respondent explains that his family owns the

Haras Adonai (Adonai stud farm), in Boituva/SP, where the Pony Pirulito was born and bred.

- The Respondent and his wife decided to raise Pirulito so that their youngest daughters, which were seven and two years old at the time, could practice horse riding with their older brothers.
- According to the Respondent, ponies have a lot of physical strength and resistance, despite their short stature. They were historically used for traction and agriculture. Dressage must therefore only be carried out by adults.
- However, Pirulito started to show signs of disobedience, running off sometimes, and even knocking down once one of the stud farm workers' daughters.
- At the date of the video, Pirulito was approached by the Respondent's youngest daughter, and "*unexpectedly bit her back, causing a serious wound in the flesh*".
- For this reason, the Respondent decided to correct Pirulito - meaning "*to put him under his control*", and to prevent such incidents from happening again in the future, in view of the numerous children who have contacts with Pirulito (i.e. the Respondent's daughters, but also the stud farm workers' children).
- The Respondent insists on the fact that, at no time did he use a whip, boots or spurs, and Pirulito was not with a bit, only with bridle, i.e. a lighter mouthpiece for horse. He did so knowingly since, in his position as a professional rider, he knows technically how his attitude could not cause any type of physical or psychological injury to the Pony.
- Pirulito is, despite his short stature, an adult (6 years old), and not a foal, meaning he is completely healthy and strong.
- The correction lasted "*a few minutes*". Since then, Pirulito continued to be trained and today he is very calm and docile and is no longer a danger for the children around him.

- The video that gave rise to the present proceedings was filmed by Kaio, the Respondent's eldest son, who shared it with his colleagues in a WhatsApp group, suggesting *"in a totally playful way"* that the Respondent would ride Pirulito at the next Olympics. Kaio is heard saying: *"Go Dad, go over there so we can see your next Olympics horse, go"*.
- In the equestrian language, *"to go over"* means *"to ride"*. In this sense, the sentence should clearly be understood as a joke, since the Respondent trains valuable Olympic horses, and has never ridden a pony.
- Therefore, according to the Respondent, *"at no time did Kaio incite any kind of violence against the horse, which, in fact, did not occur"*.
- The video, posted on social media, has been completely misinterpreted and caused much damage to the Respondent, who has been under constant threats and attacks since then. In particular, a law suit has been filed against the Respondent, an Administrative Inquiry before CBH and a police report for a minor offence is pending before the Small Criminal Claims Court of Boituva.
- The Respondent further explains why the STJD HB lacks jurisdiction to hear his matter, since the incident happened outside a sports competition, which is a prerequisite for the STJD HB to prosecute and judge this matter.
- The Respondent rode Pirulito only once, on the date of the first video which was part of the file. It would appear that the prosecutor made reference to a second video, which was not provided to the Respondent, but which he contests in any event being the person riding Pirulito, since he rode him only once.
- As per the first video, the Respondent provided the following explanation:
  - He never hit Pirulito, and did not use any whip, boots or spurs.
  - The correction lasted less than two minutes.
  - Pirulito was not with a bit, only with a bridle, the light mouthpiece for horses, which is allowed by the Dressage Regulations of the Brazilian Equestrian Federation.
  - It was never the Respondent's intention to hurt Pirulito, and even

if it were, he could not have succeeded considering the means used to correct him.

- There was no physical aggression against Pirulito.
- Pirulito is not a foal, he is an adult Pony, completely healthy.
- There was no physical or psychological abuse towards Pirulito, only a technical correction necessary to prevent him from hurting any children in the future.
- All veterinary reports (clinical and dental) submitted prove that there was no abuse or mistreatment, and that Pirulito was in perfect health condition.
- A specialised veterinarian and representatives of the NGO Abraço Animal also examined Pirulito and confirmed that he looked great and had no lesion in the mouth. It was further assessed that Pirulito was comfortable in the stable, which had an ideal size for him, with adequate food and weight. The representatives of the NGO further stated that *"the pony is fine, and he's not afraid of Leandro. So, there is no abuse, so he will stay here"*.

#### 4. Submission by the FEI

4.1 The FEI submitted its Claim Brief on 16 December 2020. As previously stated, the Tribunal will summarise only the most relevant evidence required for this decision.

4.2 The FEI was made aware of a video which was posted on Instagram on 14 July 2020, wherein the Respondent is seen *"aggressively riding a small Pony"*, in the following terms [Quote]:

- a. *The Respondent is clearly oversized and overweight to be riding such Pony, as his legs are practically reaching to the ground;*
- b. *The Respondent is seen strongly pulling on the reins to the extent that the Pony's head is restrained in an upright position.*
- c. *In addition, the Respondent jabs the Pony's mouth with both hands using the reins.*
- d. *The Pony is trying to avoid the discomfort and pain by thrusting the head up and opening the mouth.*

- e. *The Pony is afterwards pulled on a small circle where the Respondent continues to violently jerk the rein of the Pony with his right hand causing the Pony to spin in a circle trying to escape the afflicted pain.*
- f. *The Respondent is furthermore seen leaning backward with his torso using his full body weight on the reins, in an attempt to slow down / stop the Pony.*
- g. *At the same time the Pony is being followed and rounded up by a dog adding to the mental discomfort of the Pony. [End Quote]*

4.3 The Respondent was identified, by several members of the equestrian community, as the person riding the Pony in the video.

4.4 This video was then shared on social media, leading to the Respondent commenting on the incident on his Facebook account, "CT Leandro Silva", which is quoted by the FEI, where the Respondent provided his explanations on the context of this incident.

4.5 The Respondent further gave an interview to a Brazilian equestrian journal, [revistahorse.com.br](http://revistahorse.com.br), where he admitted the incident, explaining further that it took place not long after Pirulito had arrived at his training centre in Boituva.

4.6 Based on the above, the FEI is satisfied that the Respondent is beyond any doubt the adult rider in the video.

4.7 A petition has been created online, asking for justice for Pirulito, which was signed by more than 15,565 people at the time the FEI filed their claim brief.

4.8 The FEI is of the opinion that the Respondent's conduct amounts to violations of the following provisions (which will be further detailed under Section IV.5 below):

- Abuse of Horse, pursuant to Art. 142 (iv) GRs in connection with Art. 164.12 let. b GRs.
- Acts defined as criminal by Swiss law, pursuant to Art. 3 and 26 of the Swiss Animal Welfare Act (AniWa, RS 455) and Art. 16 of the Swiss Animal Protection Ordinance (RS 455.1) in connection with Art. 164.12 let. c

GRs.

- Breach of the FEI Code of Conduct for the Welfare of the Horse, pursuant to said Code of Conduct in connection with Art. 164.12 let. I GRs.

4.9 With respect to the sanctions, the FEI considers that the following factors be taken into account when assessing the sanction to be imposed on the Respondent:

- His offences were carried out deliberately, as he admitted himself on his social media post and during his interview to the Brazilian website, [revistahorse.com.br](http://revistahorse.com.br).
- The Respondent was riding a very small Pony, being an extreme overload for a Pony of such a size. Furthermore, he did so in a highly aggressive manner, jabbing the Pony's mouth and pulling on the reins, and the Pony was rounded up and followed by a dog at the same time.
- The purpose of this riding was, in the FEI's view, clearly to punish and/or cause fear to the allegedly misbehaving animal, which clearly amounts to an abusive training method.
- A second video circulated on social media, where it can be seen that the same Pony is being ridden by the Respondent's adult 20-years old son. At some point in this video, the son crashes into an obstacle because the Pony can barely jump the oversized obstacles with the weight of the rider on its back. As a consequence, the Pony suffered a dangerous, rotational fall and landed on its back. According to the FEI, an "*unidentified by-stander*" is laughing, and during the ride, the Pony is, once again, followed and rounded up by the dog. It is the FEI's view that this video raises questions on whether the video, which is the object of the present proceedings, is truly a sole incident, or whether it was actually a common practice within the Respondent's family. The FEI considers therefore that the video which gave rise to these proceedings is likely not to be a sole incident, which should also be taken into consideration for the sanctions to be imposed on the Respondent.
- All in all, the FEI is of the opinion that the Horse Abuse offense should

fall within the “Mid-Range” of sanctions as per Art. 164.14 GRs, warranting a minimum suspension of 18 months and a minimum fine of CHF 2'500.

## 5. FEI Submissions on the Rule Violations

- 5.1 For the reasons set out in Section IV.4 above, the FEI submitted the Respondent committed an Abuse of Horse towards his Pony pursuant to Article 142 and Art. 164.12 (b) of the GRs.
- 5.2 First of all, the mere fact that the Respondent rode a Pony, which was clearly too small for him and an extreme overload for the Pony, would already constitute an Abuse of Horse.
- 5.3 The FEI submitted an expert testimony of Dr Göran Akerström, FEI Veterinary Director. Based on his scientific testimony, it can be concluded that a Pony such as Pirulito, which weighs on average 205 kg, should not be asked to carry more than 15% of its weight for longer periods of work. Furthermore, a carried weight of more than 20% of the horse’s weight increases the risk for the horse’s welfare, even more so in case the carried weight would exceed 25%. *In casu*, the Respondent is likely to weigh at least 70 kg, meaning that Pirulito carries ~34% of its weight, which must be considered as an extreme overload that would cause unnecessary discomfort, even for a short period of time. The effect of the overload is, moreover, exacerbated by the very aggressive riding, the high position of the Pony’s head, as well as the rider jabbing the Pony’s mouth with the bit.
- 5.4 There is therefore no doubt that the Respondent caused physical pain and discomfort to the Pony, in clear violation of the FEI Rules.
- 5.5 The training method used by the Respondent is considered, by Dr Akerström, as “*abusive*” and can cause fear. Based on the circumstances, it is likely that it was used as a punishment or aggressive schooling, and the dog additionally unnecessarily stressed the Pony. The Respondent himself admitted having given the Pony a “*conscious correction*”.
- 5.6 The FEI views the incident as the fact that “*the Respondent rode this small Pony in a highly aggressive manner – he was strongly pulling on the reins to the extent that the*

*Pony's head was restrained in an upright position, he jabbed the Pony's mouth with both hands using the reins and he was leaning backward with his torso using his full body weight on the reins, in an attempt to slow down/stop the Pony".* It is furthermore clear from the video that the Pony was trying to avoid said discomfort and pain, by thrusting his head up and opening his mouth. Even more so, when the Pony was pulled on a small circle, he started to spin in a circle, trying to escape the afflicted pain.

- 5.7 The act of jabbing a horse in a mouth with a bit is expressly mentioned in Art. 142 (iv) GRs as situation of abuse of horse. The fact that the dog surrounded the Pony added to his mental discomfort.
- 5.8 The FEI further considers that the Respondent's actions amount to criminal acts under Swiss law, in particular Art. 3 and 26 of the AniWa in connection with Art. 16 of the Swiss Animal Protection Ordinance. In application of Art. 26 AniWa, any person who wilfully mistreats, neglects, or unnecessarily overworks an animal or abuses its dignity in any other way shall be condemned to a custodial sentence not exceeding three years or a monetary penalty. Mistreatment, neglect, or unnecessary overexertion of animals is specifically prohibited by Art. 16 of the Swiss Animal Protection Ordinance. Thus, it is the FEI's view that the Respondent should also be sanctioned in application of the above-mentioned articles, to be applied *in casu* by way of Art. 164.12 (c) GRs.
- 5.9 According to the FEI Code of Conduct for the Welfare of the Horse, *"all those involved in international equestrian sport [shall] adhere to the FEI Code of Conduct and acknowledge and accept that at all times the welfare of the Horse must be paramount"*. The Code further provides that training methods which are abusive or cause fear shall not be used against horses, and that *"abuse of a Horse using natural riding aids or artificial aids (e.g. whips, spurs, etc.) will not be tolerated"*. The Respondent's conduct amounted to a training method which was abusive and caused fear to the Pony. Moreover, *"the Respondent grossly abused the rein aids, by severely jerking on the reins that are connected to the bit resulting in jabbing of the Pony in the mouth"*, the abuse of reins being clearly done as a punishment to the Pony, for his alleged misbehaviour.
- 5.10 The FEI respectfully requests the Tribunal issue the following decision:

1. *find that the Respondent has breached Art. 142 and Art. 164.12 (b), Art. 164.12 (c) and Art. 164.12 (i) of the FEI General Regulations;*
2. *as a consequence of such breach, impose on the Respondent:*
  - a. *at minimum eighteen (18) months suspension starting from the date of the FEI Tribunal's final decision (the provisional suspension served by the Respondent shall be credited against the imposed suspension); and*
  - b. *a fine of minimum two thousand five hundred Swiss Francs (2,500 CHF); and*
3. *order the Respondent to pay a contribution towards the costs of these proceedings in the amount of two thousand Swiss Francs (2,000 CHF).*

## 6. Jurisdiction

### *Ratione materiae*

- 6.1 The Tribunal has jurisdiction *ratione materiae* over this matter pursuant to Art. 38.1 of the Statutes, Art. 18.1 and 30 of the IRs and Art. 163.1 of the GRs. The jurisdiction of the Tribunal remains undisputed.
- 6.2 The Tribunal however notes that the Respondent contested, before the proceedings opened by the STJD HB, said jurisdiction. This objection was upheld by the STJD HB, as evidenced by the Respondent in support of his statement of defence. The lack of jurisdiction of the STJD HB resulted from their own regulations – which are different from the FEI Regulations – which seem to preclude the prosecution and adjudication of any act that would be committed outside of competitions.
- 6.3 In any event, the stated lack of jurisdiction of the STJD HB has no relevance for the Tribunal's own jurisdiction. In this respect, the Tribunal notes that its own jurisdiction is not limited to *in competition* behaviour. Indeed, the scope of its competence is to hear and determine any matter properly submitted to it, including, but not limited to, Claims, Protests and Disciplinary cases (Art. 18.1).

### *Ratione personae*

- 6.4 The Respondent is validly registered with the FEI, with reference FEI 10027780. It is undisputed that he is an international professional athlete, who has been involved in equestrian sports as a professional for more than twenty years, participating in high-profile competitions, including the 2008 Olympic Games. Thus, the Respondent is a Member of the BRA-NF, and as such, a Member of the FEI, bound by its Rules and Regulations.

### *Ratione temporis*

- 6.5 The alleged offences committed by the Respondent took place in 2020, at a time when the applicable regulations were in place, as specified in Section III of the present decision. Therefore, those regulations apply to the present matter.

## **7. The Respondent**

- 7.1 The Respondent is Leandro Aparecido Da Silva (FEI ID: 10027780), a Brazilian dressage rider who has been involved in equestrian sport for many years and has competed at the highest levels of the sport, including, among others, the Olympics, the Pan-American Games and the FEI World Equestrian Games.

## **8. The Decision**

- 8.1 The facts of the present case are mostly undisputed. In particular, the Tribunal notes that the Respondent has admitted, on several occasions, to be the person filmed in the video footage that circulated on social media, where he is seen riding the Pony Pirulito.
- 8.2 The Respondent admitted, initially via a written post on Facebook, being the person on the video, which had circulated on social media. Then he gave an interview to the Brazilian website, [revistahorse.com.br](http://revistahorse.com.br). In the context of the present proceedings, the Respondent further submitted two documents, his statement of defence and the minutes of his questioning by the Brazilian police, where he also admitted being the person riding the Pony Pirulito on the video footage.
- 8.3 The Tribunal notes the description of the Respondent's behaviour in the video, as submitted by the FEI (cf. *supra*, Section IV.4.2). In particular, the Tribunal concurs with the FEI that the Respondent adopted, in the video, the following behaviour:

[Quote]:

- a. *The Respondent is clearly oversized and overweight to be riding such Pony, as his legs are practically reaching to the ground;*
- b. *The Respondent is seen strongly pulling on the reins to the extent that the Pony's head is restrained in an upright position.*
- c. *In addition, the Respondent jabs the Pony's mouth with both hands using the reins.*
- d. *The Pony is trying to avoid the discomfort and pain by thrusting the head up and opening the mouth.*
- e. *The Pony is afterwards pulled on a small circle where the Respondent continues to violently jerk the rein of the Pony with his right hand causing the Pony to spin in a circle trying to escape the afflicted pain.*
- f. *The Respondent is furthermore seen leaning backward with his torso using his full body weight on the reins, in an attempt to slow down / stop the Pony.*
- g. *At the same time the Pony is being followed and rounded up by a dog adding to the mental discomfort of the Pony.*

[End Quote]

- 8.4 In addition, the Tribunal states that the video clearly shows that the Respondent is whipping the Pony with the reins, which adds to the clear discomfort of the Pony. Similarly, while the Respondent denied using a bit and claimed he was only using a bridle, the Tribunal, upon reviewing the video, is satisfied that the Respondent used a bit on the Pony, as claimed by the FEI.
- 8.5 The abovementioned behaviour, irrespective of the circumstances, which will be further analysed *infra*, constitute horse abuse within the meaning of the FEI Rules and Regulations. In this respect, the Tribunal is comfortably satisfied that the FEI has met its burden of proof, as required under Article 32.2 of the IRs, that the Respondent committed a horse abuse within the meaning of Article 142.1 of the GRs.

- 8.6 The Tribunal has no doubt the PR is oversized to ride such a Pony. The fact that the Pony should, in the Respondent's view, not be considered as a foal, but as a full grown-up animal, is irrelevant. The Respondent himself admits that he does not usually ride this Pony, which was born and raised for his younger daughters to be able to ride horses like their older brothers. In the minutes of his questioning before the Brazilian police, the Respondent further acknowledged that Pirulito *"is used for children's recreation, and it is commonly ridden by the declarant's daughters and by the children of the other stud farm employees"*. The Respondent also said it before the STJD HB authorities, when he denied being the protagonist of the second video: he only rode Pirulito once, at the occasion of the video footage.
- 8.7 With respect to the circumstances surrounding the incident, the Respondent gave various explanations, which were slightly contradictory to some extent. In his statement of defence, he alleged having wanted to give a *"correction"* to the Pony, after the latter had bitten his youngest daughter, causing her a serious wound in the flesh, so that Pirulito does not hurt other children again in the future. But before the Brazilian police, the Respondent indicated that he wanted to give Pirulito a *"technical correction"*, because he just had witnessed him showing *"disobedience"*, i.e. that he *"ran disobeying [the Respondent's eldest daughter]'s commands"*. It is only when the Respondent approached Pirulito to give him this *"technical correction"* that he then saw Pirulito bite his youngest daughter, further adding that *"even if there was no bite, the declarant would have the same attitude so that the animal did not disobey the children and eventually hurt them"*. This discordance on the Respondent's account of the facts sheds some doubts on what really happened before the Respondent decided to ride the Pony and have this filmed by his son. Furthermore, the Tribunal notes that the Respondent, at no time, provided any evidence of the alleged wound suffered by his daughter.
- 8.8 The Tribunal also notes, when analysing the circumstances, the second video submitted by the FEI as exhibit 15. In this video, we can clearly see an adult riding the Pony in the Respondent's stud farm and jumping a course of obstacles. At some point, the Pony crashes into an obstacle, which is clearly too high for it to jump, especially considering the rider's weight on its back. While, in his statement of defence, the Respondent declared that he was not the person riding the Pony in the video, he further declared before the Brazilian police (cf. Minutes, p. 2) that it was in fact his son who *"leads the animal to jump the obstacle"*. Thus, the Tribunal infers that it indeed seems that the video, the subject of the present proceedings,

was not a one-time incident, and that the Pony appears to have suffered horse abuse on at least two occasions at the Respondent's stud farm. While it may not be the Respondent himself riding the Pony, the Tribunal finds this second video particularly troubling, considering the apparent treatment of Pirulito at the Respondent's stud farm. The Tribunal further notes that in both videos, we can hear the person filming, laughing. This also does not correspond with the Respondent's explanations, in particular for the first video. Indeed, if the Respondent's reason was in fact to give a "technical correction" to the Pony following the flesh wound the Pony apparently gave to his 2 year old daughter, the Tribunal does not understand why this correction would cause so much laughter given the severity of his daughter's injury. All in all, although not considered as part of the attributable facts for the present case, this second video displays behaviour involving the same Pony at the Respondent's farm, which needs to be considered as an indicator of the treatment and conditions allowed under the Respondent's administration of his farm. .

*Possible breach of Art. 142 GRs*

8.9 In accordance with Art. 142 GRs, *no person may abuse a Horse during an Event or at any other time. "Abuse" means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to:*

*(i) To whip or beat a Horse excessively;*

*[...]*

*(iv) To jab the Horse in the mouth with the bit or any other device.*

8.10 In this respect, the Tribunal first wishes to emphasize that the list of Art. 142 GRs is not exhaustive, as it can be understood from the terms "*including, but not limited to*" used in the first sentence of the article. Thus, a behaviour not included in the list, but which would constitute, in the Tribunal's view, a clear case of Horse abuse, could also be considered within the meaning of the present article.

8.11 *In casu*, the Tribunal is satisfied that the Respondent committed an Abuse of Horse within the meaning of Art. 142, let. i and iv of the GRs. The Respondent did whip the Pony excessively. He further jabbed the Horse in the mouth with the bit, fulfilling the conditions of the two provisions. But the Respondent did adopt a reprehensible behaviour which went even beyond these two provisions, in abusing the Pony. "*Abuse*", within the meaning of Art. 142 as stated above, is to be understood as any *action or omission which causes or is likely to cause pain or unnecessary discomfort to*

*a Horse*. An unnecessary discomfort is already a case of Horse Abuse. But in the present case, the Tribunal is of the opinion that the Respondent's actions went beyond the *unnecessary* discomfort: they extend to an *excessive* discomfort. The Pony is clearly seen trying to avoid this excessive discomfort, by thrusting his head up and opening the mouth, while the Respondent is riding him in an aggressive manner. Furthermore, at some point, the Respondent pulled the Pony onto a small circle while violently jerking the reins, causing the Pony to spin in a circle trying to escape the afflicted pain, and thus excessive discomfort. To summarise, the Tribunal is of the opinion that the Respondent's actions not only caused *unnecessary* discomfort to the Pony, which constitutes in and of itself a breach of Art. 142 GRs, but also went beyond, causing the Pony *excessive* discomfort, rendering the Respondent's actions even more reprehensible.

*Possible breach of Art. 164.12 (c) GRs in connection with AniWa*

8.12 The Tribunal noted the various arguments made by the FEI in their claim brief, in relation to possible breaches, committed by the Respondent, to Swiss criminal provisions. However, the Tribunal is a disciplinary body, and as such does not have jurisdiction to assess the behaviour of the Respondent from a criminal law perspective, whether under Swiss law or Brazilian law. This competence should remain the prerogative of the respective criminal authorities. The Tribunal looked at the Respondent's actions only from a disciplinary perspective, imposing, where applicable disciplinary – and not criminal – sanctions. Additionally, the Tribunal notes that, according to the Statement of Defence submitted by the Respondent, there were at the time criminal proceedings pending against him in Brazil, before the Small Criminal Claims Court of Boituva.

*Possible breach of the FEI Code of Conduct for the Welfare of the Horse*

8.13 According to Art. 1 let. b of the FEI Code of Conduct for the Welfare of the Horse, with respect to Training methods, *Horses must only undergo training that matches their physical capabilities and level of maturity for their respective disciplines. They must not be subjected to methods which are abusive or cause fear.* Art. 2, let. f further provides that *Abuse of a Horse using natural riding aids or artificial aids (e.g. whips, spurs, etc.) will not be tolerated.*

- 8.14 *In casu*, the Training method used by the Respondent to punish the Pony was undertaken in clear violation of the aforementioned provisions of the FEI Code of Conduct for the Welfare of the Horse. In particular, the Tribunal notes that the Respondent did whip the Pony with the reins. This training method together with the dog following and rounding up the Pony caused fear and was abusive.
- 8.15 While the same incident gave rise to different articles being breached, the Tribunal needs to assess if it was the same action, which led to concurrent breaches, or whether the reprehensible actions from the Respondent constituted separate breaches of the FEI Rules and Regulations.
- 8.16 The Tribunal is of the opinion that the Respondent's actions amounted to specific, and separate, breaches of the FEI Rules and Regulations. While Art. 142 GRs, on Abuse of Horses, reprehend the fact of whipping a Horse excessively, and jabbing the Horse in the mouth with the bit (in addition to causing unnecessary and excessive discomfort, as stated above), the FEI Code of Conduct on the Welfare of the Horse prohibits, expressly, specific Training methods which would cause the Horse fear or would be abusive, further specifying that whips, among others, will not be tolerated. Those separate breaches will be taken into account when considering the sanctions to be imposed on the Respondent.

### *Sanctions*

- 8.17 In accordance with Art. 164.1 of the GRs, the Sanction will be decided according to the guidelines mentioned in Art. 164.13 of the GRs, taking into account the circumstances of the case.
- 8.18 Art. 164.13 provides a non-exhaustive list of relevant factors that should guide the body imposing a Sanction, to categorise the offence in question as "low-end", "mid-range", "top-end" or "max", pursuant to the table listed in Art. 164.14 of the GRs. As is applicable here, the Tribunal considers *inter alia* whether the action or omission involved the maltreatment of Horses (let. c), involved fraud, violence or abuse or similar criminal acts (let. e) and was deemed to be deliberate (let. f).
- 8.19 As it has been summarised above, the Respondent's behaviour amounts to a clear abuse of horse as well as maltreatment of Horses. These are among the most severe offences that can be committed in the context of equestrian sport.

- 8.20 Furthermore, the Respondent's actions were deliberate. We can hear the person filming, laughing at the situation. The Respondent is moreover an experienced professional rider who has been participating in the most high-profile competitions. He should be a role-model, however, his actions show quite the opposite.
- 8.21 The fact that this incident happened at the Respondent's stud farm, in a private context, is another aggravating circumstance in the Tribunal's view. While, to a certain extent, some behaviour may be understood in competition – but not accepted, obviously – for possible success, this is not the case here. There was no reason justifying the Respondent's actions. Furthermore, the fact that his family is involved in this apparent behaviour of filming, laughing and also riding the Pony (as the Respondent admitted for the incident captured in the second video), is also of great concern to the Tribunal.
- 8.22 As mitigating factors, the Tribunal notes that, to its knowledge, the Respondent has never been sanctioned for disciplinary offences in the context of his equestrian experience.
- 8.23 As stated in applicable case law,<sup>1</sup> it is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement. The CAS has evidenced the existence and the importance of the principle of proportionality on several occasions. In the cases *TAS 91/56 (S. v. FEI)* and *TAS 92/63 (G. v. FEI)*, the CAS stated that: *"the seriousness of the penalty [...] depends on the degree of the fault committed by the person responsible"* (Digest of CAS Awards 1986-1998, Staempfli Editions, Berne 1998, 96 and 121).

In the advisory opinion *TAS 93/109* of September 1994 (Fédération Française de Triathlon / International Triathlon Union), the CAS, quoting the IOC Charter against Doping in Sport, stated that all sports organisations must try to impose penalties graduated in accordance with the seriousness of the offence: *"All Sport Organisations must provide, in their respective regulations, for the imposition of balanced and realistic sanctions. Sanctions must be appropriate to the recognized offense, depending on its severity [...] Sport Organisations shall always seek to determine*

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<sup>1</sup> Arbitration CAS 99/A/246 W. / International Equestrian Federation (FEI), award of 11 May 2000.

*in which way the athlete has breached the rules, and adapted sanctions should be imposed on the respective offenders accordingly.”<sup>2</sup>*

The Tribunal further notes that proportionality in CAS case law has been understood to mean that: *“there must be a reasonable balance between the kind of misconduct and the sanction”* (CAS 2005/C/976 FIFA & WADA, para 138), or stated otherwise *“[t]o be proportionate, the sanction must not exceed what is reasonably required in the search of a justifiable aim”* (CAS 2005/C/976 FIFA & WADA, para 139).

8.24 The FEI concluded that the Tribunal should impose at a minimum an eighteen (18) months suspension as well as minimum two thousand five hundred Swiss Francs (2,500 CHF) fine. The Respondent did not agree to the proposed monetary sanction but requested that his financial situation – and the financial situation in Brazil in general – be considered by the Tribunal when imposing the fine.

8.25 When determining the appropriate sanction, the Tribunal is guided, among others, by the rules established in Art. 164 of the GRs but it is not bound by the conclusions of the Parties.

8.26 The applicable rule for horse abuse carries a suspension of a minimum of three (3) months up to life. The Tribunal has already described in detail the seriousness of the Respondent’s infringements.

The Tribunal further finds that the Respondent compromised the Pony’s welfare. Horse welfare is paramount in equestrian sport, and to preserve and protect a horse’s welfare is one of the FEI’s statutory objectives (Article 1.4 of the Statutes).<sup>3</sup>

8.27 The Tribunal is of the opinion that the Respondent’s offence with respect to Abuse of Horse falls within the “top-end” category of the table provided at Art. 164.14 of the GRs. Accordingly, a sanction between 2 to 5 years should be imposed on the Respondent for this offence.

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<sup>2</sup> *“Tous les organismes sportifs doivent prévoir dans leurs règlements l'imposition de sanctions pesées et réalistes. Les sanctions doivent être suffisantes pour l'infraction reconnue, selon sa gravité, [...] les organisations sportives doivent toujours chercher à déterminer de quelle façon l'athlète visé a enfreint les règlements, et des sanctions modulées devraient être imposées à toutes les personnes incriminées” (loose translation on the text of the Decision)*

<sup>3</sup> Article 1.4: To preserve and protect the welfare of the Horse and the natural environment by establishing appropriate codes of conduct.

- 8.28 With respect to the infringements to the FEI Code of Conduct for the Welfare of the Horse, the Tribunal notes that such infringement is not specifically enumerated within the table of Art. 164.14 of the GRs, which therefore allows the Tribunal to sanction the offence using the *"general sanctioning power"*, in accordance with Art. 164 of the GRs.
- 8.29 Therefore, based on the principle of proportionality and all of the evidence considered by the Tribunal, the Tribunal is imposing a period of Suspension of thirty (30) months on the Respondent for violating Article 142.1 of the GRs, to which is added a period of Suspension of six (6) months for violating the FEI Code of Conduct for the Welfare of the Horse. Therefore, the total period of Suspension is thirty-six (36) months or three (3) years. The Provisional Suspension served by the Respondent will be credited against the imposed Suspension.
- 8.30 With respect to the fine, 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"*.
- 8.31 Pursuant to Art. 164.14, the fine to be imposed on the Respondent would fall between CHF 5'000 to CHF 10'000 in the "top-end" section of the Abuse of Horse offence. In the present case, the Respondent has repeatedly stated to the FEI and then the Tribunal that his income is too low to afford to pay the fine proposed by the FEI. However, the Respondent has not submitted any documents establishing his income or his financial situation. The mere reference to the minimum salary of Brazil in comparison to Switzerland is irrelevant without any supporting documents. What matters, when determining the scope of the fine to be imposed, is the personal situation of the Respondent (in addition to the other factors already exposed *supra*), which the Tribunal considers has not been established satisfactorily by the Respondent. During the proceedings, the FEI also requested the Respondent to submit any documents attesting his financial situation, which the Respondent specifically refused to do.

- 8.32 In view of the above and taking into consideration all circumstances of the present case, the Tribunal considers that a five thousand Swiss Francs (CHF 5,000) fine is appropriate.
- 8.33 Finally, with respect to the costs of the proceedings, while no hearing took place, the Tribunal concurs with the FEI that the proceedings were delayed due to the Respondent changing his mind on the proposed fine. The fact that the Respondent refused to submit any documents evidencing his financial situation was also detrimental to the proceedings, since the FEI could not assess a possible reduction of the proposed fine. Thus, the Tribunal orders that the Respondent bears the proceeding costs in the amount of two thousand Swiss Francs (2,000 CHF).

## 9. Terms of the Decision

- 9.1 As a result of the foregoing, the Tribunal finds the Respondent's actions are considered horse abuse within the meaning of Art. 142.1 of the GRs, as well as breaches of the FEI Code of Conduct for the Welfare of the Horse.
- 9.2 For the above reasons, and in accordance with Articles 142.1, 164.5, 159.2, 164.7, 164.12 let. b and i, 164.13 and 164.14 of the GRs, the Tribunal therefore decides as follows:
- 1) Leandro Aparecido Da Silva has engaged in horse abuse and thereby violated Article 142 of the GRs.
  - 2) Leandro Aparecido Da Silva has breached the FEI Code of Conduct on the Welfare of the Horse.
  - 3) Consequently, Leandro Aparecido Da Silva is suspended for a total period of **three (3) years – consisting of thirty (30) months for the violation of Article 142 GRs (horse abuse), and six (6) months for the violation of the FEI Conduct on the Welfare of the Horse –**, starting from the date of this decision. The Provisional Suspension served by the Respondent since 1 December 2020 shall be credited against the imposed Suspension. Consequently, the Respondent is suspended until **30 November 2023**.
  - 4) Leandro Aparecido Da Silva is fined **five thousand Swiss Francs (CHF 5,000)**.
  - 5) Leandro Aparecido Da Silva is ordered to pay **two thousand Swiss Francs (CHF 2,000)** towards the cost of these proceedings.

9.3 During the period of a Suspension, the person, Horse or body suspended may take no part in Competitions or Events as an Athlete, Horse or Official or in the organisation of, any Event under the jurisdiction of the FEI or any Event under the jurisdiction of an NF in accordance with the Statutes or in any FEI related activity (e.g. FEI courses, meetings, General Assembly etc.), Art. 164.7 of the GRs.

9.4 According to Article 165 of the GRs, this Decision is effective from the date of its oral or written notification to the affected party or parties.

9.5 According to Articles 162.1 and 162.7 of the GRs, this Decision may be appealed to the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes
- b. The President of the NF of the person sanctioned: Yes
- c. FEI: Yes
- d. Any other: No

FOR THE PANEL



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Mr Jose A. Rodriguez Alvarez, Tribunal panel chair