

DECISION of the FEI TRIBUNAL

dated 26 August 2021

in the matter of

Mr Simon Sándor TÓTH

(FEI Case number: FEI 2019/CM21 – FAVORY FABULA)

FEI Tribunal Hearing Panel:

Mr Jose A. Rodriguez Alvarez (MEX), one-member panel

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FEI Tribunal Reference: C21-0035 [2019/CM21]

Person Responsible/ID/NF: Simon Sándor TÓTH/10192876/HUN

Horse/Passport/NF: FAVORY FABULA/103OW30/HUN

Event/ID: CAI2\*-H4 – Dunajsky Klatov (SVK)/2019\_CI\_1758\_A\_H4\_01

Date of Event: 22-25.08.2019

Prohibited Substance(s): Atropine, Scopolamine

Bar Code Nos.: 5588533

I. SUMMARY OF LEGAL AUTHORITY

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

Statutes 24<sup>th</sup> edition, effective 19 November 2019 (“Statutes”), Arts. 1.5, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2019, Arts. 118, 143.1, 161, 168 and 169 (“GRs”).

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

FEI’s Equine Anti-Doping and Controlled Medication Rules, Based upon the 2015 WADA Code, changes effective 1 January 2019 (“EADCM Rules”).

The World Anti-Doping Code - International Standard – Prohibited List – January 2019 (“WADA Prohibited List”).

B. Person Responsible: Mr Simon Sándor TÓTH

C. 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.”

**ECM Rules Art. 2.1.1:** “It is each *Person Responsible’s* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse’s* body during an Event without a valid Veterinary Form. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse’s Samples*, even though their *Support Personnel* may be considered additionally responsible under this Article and Articles 2.2 - 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a *Rule* violation under Article 2.1.”

**ECM Rules Art. 7.6.1:** "In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these ECM Rules or (where some discretion as to Consequences exists under these ECM Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

## II. Factual background

1. Mr Simon Sándor TÓTH (FEI ID 10192876), the Person Responsible ("**the PR**") and driver for Hungary, competed with the Horse FAVORY FABULA ("**the Horse**") at the CAI2\*-H4 in Dunajský Klatov, Slovakia between 22 and 25 August 2019 ("**the Event**").
2. The Fédération Equestre Internationale ("**the FEI**" together with the PR, "**the Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
3. At the occasion of the Event, the Horse was tested, and returned a positive result for Atropine and Scopolamine, which both are Controlled Medication Substances under the FEI's Equine Prohibited Substances List effective 1 January 2019. Specifically, Atropine is an anticholinergic, used to dilate the eyes and as an antispasmodic. Scopolamine is a parasympathetic used to treat gastrointestinal tract spasms. Both Atropine and Scopolamine are designated as "Specified Substances".
4. The positive finding of Atropine and Scopolamine in the Horse's sample gave rise to a Controlled Medication Rule Violation – as no Veterinary Form was submitted for the use of the Specified Substances – under the FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**").
5. By way of a notification letter dated 30 September 2019, the FEI informed the PR of a possible violation of Article 2.1 (*The Presence of a Controlled Medication Substance*

*and/or its Metabolites or Markers in a Horse's Sample*) of the FEI Equine Controlled Medication Rules (**"the ECM Rules"**).

6. On 30 September 2019, the FEI Legal Department officially notified the PR and the Hungarian Equestrian Federation (**"HUN-NF"**), of a violation of Article 2.1 (The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample) of the ECM Rules, based on the Laboratory's Adverse Analytical Finding of Atropine and Scopolamine in the Horse's Sample collected at the Event and the potential consequences (the **"Notification Letter"**).
7. The PR was not provisionally suspended, since the Prohibited Substances found on the Horse's sample were Specified Substances (cf. Article 7.4.1 of the ECM Rules).
8. The PR did not request for the B sample analysis, despite being duly informed of his right to do so by the FEI. His right to request for said analysis was thus deemed waived.
9. The PR submitted his position to the FEI on 9 October 2019, which will be addressed *infra*, under Section IV.

### **III. Procedural background before the FEI Tribunal**

10. By email dated 2 June 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel for the adjudication and approval of a Settlement Agreement.
11. On 11 June 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate and approve this case. The Parties were asked to provide any objections to the constitution of the hearing panel by 14 June 2021. Furthermore, the HUN-NF was requested to provide the Tribunal with the contact details of the PR.
12. On 11 June 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
13. On 14 June 2021, the HUN-NF provided the Tribunal with the personal contact details of the PR, including his email address.
14. Consequently, on 25 June 2021, the Tribunal acknowledged receipt once more of the Settlement Agreement submitted by the FEI, which was transmitted to the PR

for his information. The 11 June 2021 letter from the Tribunal was also provided to the PR by way of the same correspondence. The Parties were further informed that the Panel would review the case, and a decision, based on the file, would be notified to the Parties in due course.

#### IV. The Parties' Submissions

##### A. The Submission of the PR:

15. The PR submitted his position in the context of the FEI proceedings, on 9 October 2019, which is the following.
16. "I have been driving this horse for several months. During that period, he didn't need any veterinary treatment. The substances found in his sample must have come from food contamination. As I feed no additives or herbal supplements, the only source for these two substances could have been the hay, that I bought from the OC. Enclosed I send the invoice for the hay. I could choose from two different hay types, one was not so good quality so I have chosen the more expensive option, that was harvested from a natural lawn. As we know there are several herbs growing in our region that do contain both atropine and scopolamine: Hyosciamus niger, Datura-Stramonium, Atropa bella-donna. I think the FEI is aware of this fact, that the reason why it is a "Specified substance" on the FEI Prohibited Substance List. The presence of these ingredients due to veterinary treatment, as scopolamine is used for colic – the horse had no symptoms of that, and if so the normal Bucopan could be used with a Veterinary Form A anyway – atropine for eye problems. It is not likely at all, that my horse was competing with these illnesses under the supervision of FEI Veterinary Officials."
17. By way of the FEI Questionnaire completed on 7 October 2019, the PR further indicated his wish to be more careful and cautious in the future. His priority is the horse welfare, and he only gives feed free of prohibited substances to his horse. The Horse is stabled in the private stable, at the PR's home.
18. The PR also submitted a written declaration from Dr Laszlo Geza Gyucsik – the Horse's Veterinarian –, which indicated that the Horse was not under medical treatment during the period of 2019 driving Event.

## B. The Submission of the FEI:

19. On 2 June 2021, the FEI provide the Tribunal with the Settlement Agreement reached between the Parties, which consequently contained the FEI's position, which can be summarised as follows.
20. The FEI acknowledges that there are some indications of anticholinergic plants (e.g. *Hyosциamus niger*, *Datura Stramonium* and *Atropa bella-donna*, as alleged by the PR) growing in temperate Europe, and that those plants may (or may not) have been present in the meadows where the Horse grazed, or in the hay the Horse was fed with at the Event. However, the FEI considers that the PR's arguments have not been substantial, and that the PR failed to provide proper evidence supporting his allegations. In particular, the PR did not provide any evidence coming in support of the allegation by means of which the abovementioned plants would have been present in the hay or in the meadows.
21. Furthermore, 5 horses underwent a sample collection at the Event, and only the PR's Horse returned a positive sample for Atropine and Scopolamine. This could *prima facie* exclude the hay as the source of the Prohibited Substances, but this exclusion is moderated by the fact that the PR explained that there were two hay options for sale at the Event, and that the presence of specific plants in hay bales can be very sporadic (i.e. present in some plants and not in others). All in all, the negative results from the other horses tested at the Event do not allow the FEI to draw any conclusions which could be of relevance for the present matter.
22. Based on the elements and evidence produced, the FEI considers that the PR has failed to establish how the Prohibited Substances entered the Horse's system. Therefore, neither Art. 10.4 nor Art. 10.5 can apply in this case, meaning that the PR is not entitled to have his Period of Ineligibility eliminated or reduced.
23. In view of the above, the FEI submits that the applicable Period of Ineligibility imposed on the PR shall be six (6) months.
24. The FEI further acknowledges that there has been substantial delay in processing the present case, delay which is not attributable to the PR. The FEI therefore requests the Tribunal to apply Art. 10.10.2 of the ECM Rules, which state that "Where there have been substantial delays in the hearing process or other aspects of Medication Control not attributable to the Person Responsible and/or member of the Support Personnel alleged to have committed the Rule violation, the Hearing Panel may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another ECM Rule violation last

occurred. All competitive results achieved during the period of Ineligibility including retroactive Ineligibility shall be Disqualified". In application of said article, the FEI requests for the Period of Ineligibility to start three months before the date of the Final Decision of the Tribunal.

25. Finally, the PR submitted a request for the lowering of the fine, in view of his monthly income in Hungary (amounting to around 111'000.- HUF, to which the FEI agreed to lower the fine to CHF 300.-.

## V. The Decision

26. **Agreement between the Parties:**

\*\*\*Quote\*\*\*

3. NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

- 3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse FAVORY FABULA at the CAI2\*-H4 in Dunajsky Klatov (SVK) on 25 August 2019, the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:

- (a) The PR admits the violation of Article 2.1 of the ECM Rules (*The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*);
- (b) The PR bears fault for the Rule Violation and the applicable Period of Ineligibility shall be six (6) months;
- (c) The period of Ineligibility shall commence three months before the date of the Final Decision of the FEI Tribunal in accordance with Art. 10.10.2 of the ECMR Rules;
- (d) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;

- (e) In addition, all competitive results achieved by the PR during the retroactive Period of Ineligibility shall be disqualified with all resulting consequences, including forfeiture of any related medals, points and prizes in accordance with Art. 10.10.2 [recte: Art. 10.1.2] of the ECM Rules;
  - (f) The PR shall pay a fine of 300 CHF;
  - (g) Each party will bear its own legal and other costs incurred in connection with these proceedings;
  - (h) No other Sanctions will apply in this case;
  - (i) This violation of the ECM Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8 of the ECM Rules.
- 3.2 This agreement is made in accordance with Article 7.6.1 of the ECM Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the ECM Rules.
- 3.3 The parties acknowledge and agree that, pursuant to Article 13.3 of the ECM Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

\*\*\* End Quote\*\*\*

## VI. Jurisdiction

27. The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ECM Rules, as well as Article 18 of the IRs. The PR is a member of the Hungarian Equestrian Federation, and as such is bound by the ECM Rules. Article 7.6.1 of the ECM Rules provides for agreements to be reached between parties, subject to approval by the FEI Tribunal. As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

## VII. Approval of Agreement

28. Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI and the PR accept that the latter bears Fault for his first anti-doping rule violation. The Tribunal duly considered the explanations provided by the PR, as well as the FEI's analysis and evaluation of such. The Tribunal further noted that both the FEI and the PR acknowledge that the PR was not able to establish, on a balance of probabilities, how the Prohibited Substances entered the Horse's system. Consequently, neither Article 10.4 nor Article 10.5 of the ECM Rules can apply to the PR, for him to be eligible for an elimination or a reduction of his Period of Ineligibility.
29. Furthermore, the Tribunal also takes note that the Parties agreed to apply Art. 10.10.2 of the ECM Rules (*Delays Not Attributable to the Person responsible and/or member of the Support Personnel*) in the present matter, in view of the delays in processing the case. All competitive results achieved by the PR during the retroactive Period of Ineligibility will consequently be disqualified.
30. The Tribunal wishes to emphasise that it did not evaluate whether the PR has met the burden of proof regarding the level of Fault for this controlled medication rule violation. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the decision in this case depends on the particular circumstances disclosed as set out above.
31. To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EADCM Rules.
32. Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case Simon Sándor TÓTH C21-0035 (2019/CM21 FAVORY FABULA).

## VIII. Decision

1. The Tribunal rules that the Agreement reached between the FEI and the PR, Mr Simon Sándor TÓTH concerning the case C21-0035 Simon Sándor TÓTH [2019/CM21 FAVORY FABULA] is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Paragraph VI above are incorporated into this Decision.
2. This Decision is subject to appeal in accordance with Article 12.2 of the EADCM Rules. 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.
3. This Decision shall be notified to the PR, to the NF of the PR, and to the FEI.
4. This Decision shall be published in accordance with Article 13.3 of the EADCM Rules.

FOR THE TRIBUNAL



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Mr Jose A. Rodriguez Alvarez, One-Member Panel