

DECISION of the FEI TRIBUNAL

dated 28 September 2021

in the matter of

Mr Abdelhak KADDOURI (Ref. C20-0045)

(FEI Case number: FEI 2020/FT03 – [REDACTED])

FEI Tribunal Hearing Panel:

Mr Jose A. Rodriguez Alvarez, one-member panel

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FEI Tribunal Reference: C20-0045 [2020/FT03]

Person Responsible/ID/NF: [REDACTED]

Additional Person Responsible/ID/NF: Abdelhak KADDOURI/10024305/BRN

Horse/Passport/NF: [REDACTED]

Event/ID: CEI2\* 120 – Sakhir (BRN), 2019\_CI\_1380\_E\_S\_01

Date of Event: 13-14.12.2019

Prohibited Substance(s): Altrenogest

Bar Code Nos.: 5588970

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. Additional Person Responsible: Mr Abdelhak KADDOURI.

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.”

**FEI Endurance Rules, Art. 800:** “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

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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.”

**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. 10.2:** "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.5 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6. A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Controlled Medication violation."

**ECM Rules, Art. 10.8.1:** "For a Person Responsible and/or member of the Support Personnel's second ECM Rule violation (within the previous 4 years), the period of Ineligibility shall be the greater of: (a) three months; (b) one-half of the period of Ineligibility imposed for the first ECM Rule violation without taking into account any reduction under Article 10.6; or (c) twice the period of Ineligibility otherwise applicable to the second ECM Rule violation treated as if it were a first violation, without taking into account any reduction under Article 10.6."

## II. Factual background

1. Mr Abdelhak KADDOURI (FEI ID 10024305), the Additional Person Responsible (the "APR") and Endurance Trainer for Bahrain, was the registered Trainer of the Horse [REDACTED] (the "Horse"), which competed at the CEI2\* in Sakhir, Bahrain, between 13 and 14 December 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. Urine and blood samples were collected from the Horse during the Event and returned a positive result for Altrenogest.
4. Altrenogest is a hormone used for the synchronisation of oestrus and calming effects. It is a "Prohibited Substance" that is classified as "Controlled Medication Substance" under the FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs").

5. Furthermore, and as no Veterinary Form was submitted for the use of Altrenogest, the Adverse Analytical Finding (the “**AAF**”) in the Horse’s Sample gives rise to a Controlled Medication rule violation (the “**CM Rule Violation**”) under the EADCMRs.
6. By way of a notification letter dated 20 January 2020, the FEI informed the APR 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**”).
7. The APR was provisionally suspended, since there was a previous CM Rule Violation involving a horse trained by the Trainer<sup>1</sup> (cf. Article 7.4.1 of the ECM Rules).
8. The Provisional Suspension imposed on the APR was lifted on 31 August 2020 by the Tribunal, upon request from the FEI.
9. The PR never submitted any position, despite a reminder from the FEI.

### III. Procedural background in front of the FEI Tribunal

10. By email dated 10 August 2021, the FEI submitted the case files to the Tribunal for adjudication. The Bahrain Royal Equestrian & Endurance Federation (the “**BRN-NF**”) was copied on the FEI’s correspondence.
11. On 18 August 2021, the Tribunal Chair 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 the constitution of the hearing panel by 23 August 2021. Furthermore, the Tribunal Chair granted the APR with the opportunity to respond to the FEI’s allegations about the Prohibited Substance discovered in the Horse’s system, by providing a statement of defence and any supporting evidence by 7 September 2021. The Tribunal Chair further informed the APR that should he fail to respond within the deadline, the Tribunal hearing panel would decide this case using the file material in its possession. Furthermore, the BRN-NF was requested to confirm that the email used for the APR, which was submitted by the BRN-NF in the context of the proceedings related to the provisional suspension imposed on the APR, was the correct one. Finally, the Tribunal Chair informed the Parties of their right to request an oral hearing.

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<sup>1</sup> The precedent concerned the Horse RAZELLE DE BAUZENS, FEI Case reference 2018/FT25

12. On 19 August 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
13. On 10 September 2021, the FEI informed the Tribunal that since the APR did not submit any position, and in view of the case file, the FEI did not request for a hearing in the present case.
14. No further position was submitted, and neither Party requested an oral hearing.

**A. Written Submission by the APR:**

15. The APR did not provide any submissions on the allegations brought against him by the FEI after the Tribunal Chair's request. The APR neither provided any submission to the FEI.

**B. Written Response by the FEI:**

16. On 18 August 2021, the FEI provided its Response in this case.
17. The FEI submitted that:
  - a) According to Article 118.3 of the GRs, *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.
  - b) Article 118.3 of the GRs further states: *"In Endurance, the Trainer shall be the additional Person Responsible."* The FEI also highlighted the definition of Trainer in the Endurance Rules, which states: *"for the purpose of this Code, 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 Veterinary care and the administration of therapeutic substances under Veterinary advice."*<sup>2</sup>
  - c) It has also been confirmed in previous Tribunal decisions<sup>3</sup> that given the specific nature of Endurance racing, trainers indeed make relevant and concrete decisions about their horses, including: feed and supplements (if

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<sup>2</sup> FEI Endurance Rules, Article 800, par. 3 & 4

<sup>3</sup> Decisions dated 25 June 2020 (cases 2019/FT07 and 2019/CM08); Decision 2019/CM06

any); shoeing type and cycle, choice of veterinarian and veterinarian treatments such as the administration of medications; training regime and exercise program; and the horse's competition schedule.

- d) In addition to Article 118.3 of the GRs and the previous decisions of the FEI Tribunal, the APR was also registered as the Horse's Trainer for the Event in the FEI Database. Once someone is registered as a Trainer in the FEI database, he is irrefutably presumed to be the person responsible for making relevant and concrete decisions about the horse's training and welfare, as described in the previous paragraph. Furthermore, the FEI as a prosecutor relies on the FEI database where Athletes and Trainers are registered with the FEI. The registration system allows the FEI to hold registered individuals accountable when they violate FEI Rules and Regulations.
- e) Article 3.1 of the ECM Rules makes it the FEI's burden to establish all the elements of the ECM Rule violation, to the comfortable satisfaction of the Tribunal.
- f) The elements of Article 2.1 of an ECM Rule violation are straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1"*. Instead, it is a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the A sample analysis confirmed the presence of Altrenogest, which is a Controlled Medication Substance, and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. Therefore, the FEI submitted that it has discharged its burden of establishing that the APR violated Article 2.1 of the ECM Rules.
- g) Article 10.2 of the ECM Rules provides that a Person Responsible or Additional Person Responsible with no previous doping and/or Controlled Medication offences, but who violates Article 2.1 of the ECM Rules, is subject to a period of Ineligibility of six (6) months, unless he can rebut the presumption of fault on a balance of probability (Article 3.1 of the ECM Rules). If the PR / APR fails to do so, the six (6) months period of Ineligibility applies.
- h) To rebut the presumption of fault, the ECM Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement that the PR/APR proves how the Prohibited Substance entered the Horse's system before making any plea of No (or No Significant) Fault or Negligence. Indeed, this threshold requirement is strictly applied because without such proof, it would be impossible to assess the degree of Fault or Negligence (or No Significant Fault or Negligence) of the PR/APR for the presence of the Prohibited Substance in the

Horse.

- i) In this case, the FEI submitted that the APR did not submit any explanation. In the separate proceedings against him, the PR did also not provide any description of events that led to the CM Rule Violation, and elected to have his case processed through the Administrative Procedure.
- j) The FEI submitted therefore that the APR failed to establish, on a balance of probability, the “threshold requirement” of how the Prohibited Substance entered the Horse’s body. Since it was not possible to evaluate the APR’s degree of Fault or Negligence, the FEI further submitted that Article 104 and Article 10.5 of the ECM Rules cannot be applied, i.e. no elimination or reduction of the period of Ineligibility can be applied in this case.
- k) The FEI considered the APR’s previous ECM Rule Violation with his horse Razelle de Bausens, at an Event which took place in March 2018. This precedent was taken into consideration by the FEI in the context of the Provisional Suspension imposed, in application of Article 7.1.4 of the ECM Rules (2019 edition). In particular, the ECM Rules as of 2019 stated that *“In the discipline of Endurance, where a Provisional Suspension is imposed on a registered Trainer of the Horse pursuant to either Clause 7.4.1 or 7.4.2 below, the registered Trainer shall be notified accordingly and the provisions of this Article 7 that apply to the Person Responsible and the Owner shall also apply to the registered Trainer.”* A newly adopted Article 7.4.1 of the ECM Rules further specified that for the discipline of Endurance, in specific cases the FEI shall provisionally suspend the registered Trainer which shall be considered as a member of the Support Personnel for the purpose of the ECM Rules. Later, Article 7.4.1 stated: *“Additionally, and notwithstanding the above provisions or the provisions of Article 7.4.2 below, for the discipline of Endurance, the FEI shall provisionally suspend the registered Trainer of the Horse based on all of the following elements: (i) an Adverse Analytical Finding for one (1) Controlled Medication Substance (including its metabolites or markers) from the A Sample or A and B Samples, except where the Controlled Medication Substance is a Specified Substance; and (ii) a previous violation of the ECM Rules within the last four (4) years or a previous violation of the EAD Rules within the last ten (10) years involving the same Horse or another Horse trained by the registered Trainer provided that the registered Trainer was the registered Trainer of that Horse at the time of the previous violation(s); and/or (iii) a pending EAD or ECM Rule violation involving the same Horse or another Horse trained by the registered Trainer provided that the registered Trainer was the registered Trainer of that Horse at the time of the previous violation(s).”*
- l) The FEI started to charge systematically the Trainers as APRs only as of January

2019, following the abovementioned regulations' modifications.

- m) Consequently, while the FEI did provisionally suspend the APR based on the newly adopted provisions, the APR has not been charged with a CM Rule Violation for the prior case involving his horse Razelle de Bauzens, since he could not by the time (in 2018) be sanctioned as a Trainer. Article 10.8 of the ECM Rules ("Multiple Violations") can therefore not be applied in the case at hand, and the present case shall be considered the APR's first CM Rule Violation.
- n) In view of the above, the FEI recommended a period of Ineligibility of six (6) months be imposed on the APR.
- o) On the fine to be imposed, the FEI submitted that Article 10.2. of the ECM Rules provides that, for a violation of Article 2.1 ECM Rules, a fine of up to CHF 15,000 and appropriate legal costs shall also be imposed. The FEI Guidelines for fines and contributions towards legal costs provide additional guidance on the appropriate fines and legal costs for Controlled Medication and Banned Substance cases taking into account the level of Fault/Negligence, multiple violations, aggravating circumstances, if present etc. In Controlled Medication cases without any reduction of the Ineligibility period, as in the present case, the fine ranges between CHF 3'000 and CHF 5'000.
- p) On the costs of the proceedings, the FEI submitted that the APR should be ordered to pay appropriate legal costs, which the FEI submitted should range between CHF 1'000 and CHF 5'000.
- q) The FEI requested the following prayers for relief:
  - (i) *upholding the charge that the Trainer has violated Article 2.1 of the ECM Rules;*
  - (ii) *imposing a period of Ineligibility of six (6) months on the Trainer, commencing from the date of the Final Decision (the Provisional Suspension already served by the Trainer shall be credited against the imposed Ineligibility Period);*
  - (iii) *fining the Trainer in the amount of 3'500 CHF; and*
  - (iv) *ordering the Trainer to pay the legal costs of 1'000 CHF that the FEI has incurred in these proceedings.*



#### IV. Jurisdiction

18. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the ECN Rules and Article 18 of the IRs. The APR is a member of the BRN-NF, which is a member of the FEI; therefore, the APR is bound by the ECM Rules.

#### V. The Decision

19. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

##### 1. The Additional Person Responsible

20. The Trainer is the Additional Person Responsible for the Horse pursuant to Article 118.3 of the GRs and previous decisions of the FEI Tribunal<sup>4</sup>.

##### 2. Considering

21. The Horse's sample confirmed the presence of a Controlled Medication Substance. As set forth in Article 2.1 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Prohibited Substance in the Horse's sample. The Tribunal is satisfied that the report relating to the A-sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is further satisfied that the test results evidence the presence of Altrenogest in the A Sample taken from the Horse at the Event. Altrenogest is a Controlled Medication Substance, the presence of which in a Horse's body during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
22. As a result, the FEI has established an AAF and sufficiently proven the objective elements of the offence in accordance with Article 3.1 of the ECM Rules.
23. Pursuant to Article 10.2.1 of the ECM Rules, the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Controlled Medication Substance in a Horse's sample, as in this case, is six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.4 or 10.5 of the ECM Rules.

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<sup>4</sup> Cf. e.g. FEI Tribunal Decision C21-0014 dated 24 August 2021

24. In cases brought under the ECM Rules, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, an APR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the ECM Rules.
25. In order for Articles 10.4 and 10.5 of the ECM Rules to be applicable, the APR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
26. As confirmed by various CAS panels as well as FEI Tribunals, the APR has to 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 has to reach a 51% threshold for it to be successful.<sup>5</sup>
27. In the present case, the APR did not submit any position. As a result, and quite obviously, the Tribunal concurs with the FEI's submission, and finds that the APR did not establish how the Controlled Medication Substance entered the Horse's system.
28. Where the first hurdle has not been met, i.e., establishing the source of the Prohibited Substance, the Tribunal cannot continue with the second step and evaluate the APR's degree of Fault or Negligence. Therefore, the Tribunal finds that the APR is not entitled to any reduction of the otherwise applicable period of Ineligibility under Articles 10.4 and 10.5 of the ECM Rules.
29. With respect to a possible aggravating circumstance from the APR's previous offense from March 2018, the Tribunal rules that such precedent cannot be held against the APR, as Trainers were not subject to disciplinary proceedings for CM Rule Violations back in 2018. Therefore, the "Multiple Violations" aggravating circumstance resulting from Article 10.8 of the ECM Rules does not apply to the APR.
30. The Tribunal finds that the applicable period of Ineligibility is six (6) months pursuant to Article 10.2 of the ECM Rules.
31. The Tribunal is however concerned that the APR has been provisionally suspended for a period greater than the actual sanction imposed on him. As the Tribunal had already

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<sup>5</sup> 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.

stated in the Preliminary Decision taken on 31 August 2020, preliminary suspensions must be treated diligently, in order to avoid unfortunate situations such as the present one to occur. In view of the above, and considering that the APR bears no responsibility to this situation (except the responsibility of the CM Rule Violation, obviously), the Tribunal holds that no fine or procedural costs shall be imposed on the APR. This is further justified by the delay in the prosecution and the submission of the present case. The Event took place in December 2019, and the APR was informed of the CM Rule Violation in January 2020. While the provisional suspension was lifted in August 2020, it took one more year for the case on the merits to be submitted to the Tribunal, while no further procedural act was undertaken in the meanwhile – at least to the Tribunal's knowledge based on the file submitted to it.

## VI. Operative part of the Decision

32. In summary, the Tribunal imposes the following sanctions in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- a) The Tribunal upholds the charge that the APR violated Article 2.1 of the ECM Rules.
  - b) The APR shall be sanctioned with a period of Ineligibility of six (6) months, commencing from the date of the Provisional Suspension. Therefore, the APR is no longer ineligible.
  - c) No fine is imposed on the APR.
  - d) The APR shall not bear any part of the costs of these proceedings.
33. 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 authorized or organized by the FEI or any National Federation, or participate in any capacity in competitions authorized or organized by any international or national-level event organisation (Article 10.11.1 of the ECM Rules).
34. Where a Person Responsible or member of the Support Personnel who has been declared Ineligible violates any of the conditions in the previous paragraph during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.2 of the ECM Rules).

35. According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
36. In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of its receipt.

VII. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The NF of the APR: Yes
- c. Any other: No

FOR THE TRIBUNAL



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Mr Jose A. Rodriguez Alvarez, One-Member Panel