

**DECISION of the FEI TRIBUNAL**

**dated 3 November 2021**

**in the matter of**

**Mr. Arturo PARADA VALLEJO**

**(FEI Case number: FEI 2019/CM2015 VITOT KERVEC)**

**FEI Tribunal Hearing Panel:**

**Mr Mohammed ALSaberi (UAE) one-member panel**

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**FEI Tribunal Reference:** C21-0012

**Horse/Passport:** VITOT KERVEC/104MN89/MEX

**Person Responsible/ID/NF:** Mr Arturo PARADA VALLEJO/10095117/MEX

**Event/ID:** CSI4\* - Balvanera (MEX), 2019\_CI\_1143\_S\_S\_01

**Date of Event:** 28-31.03.2019

**Prohibited Substance:** Hydroxydetomidine

**Bar Code Nos.:** 5578005

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

### **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, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, changes effective 1 January 2019.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2<sup>nd</sup> edition, changes effective 1 January 2019.

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective 1 January 2020, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

### **B. Justification for sanction:**

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

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

**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 will be considered additionally responsible under 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 12.2.2 and published as provided in Article 13.3”.

## **II. Factual background**

- 1.** Mr Arturo PARADA VALLEJO, (FEI ID 10095117) is the Person Responsible **(the PR)** in accordance with Article 118.3 of the FEI General Regulations and is a jumping rider for Mexico.
- 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.** The PR participated with VITOT KERVEC (104MN89/MEX) **(the Horse)**, in the CSI4\*- Balvanera (MEX), 2019\_CI\_1143\_S\_S\_01 from 28-31.03.2019 **(the Event)**. The PR is a member of the Mexican Equestrian Federation **(the MEX-NF)**, which is a member of the FEI and therefore is bound by FEI’s Equine Anti-Doping and Controlled Medication Regulations 2<sup>nd</sup> edition, changes effective January 2019 **(the EADCM Regulations)**.
- 4.** At the Event on 28 March 2019, the Horse was selected for an in-competition doping control test. Blood and Urine samples were collected from the horse and sent to the FEI approved Laboratory, the LGC Newmarket Road Laboratory **(the LGC)**, in Cambridgeshire, UK for analysis. The samples were divided into an “A sample” and “B sample”.
- 5.** The urine analysis of the A Sample revealed the presence of Hydroxydetomidine. Hydroxydetomidine is a sedative used as a sedation

and anaesthetic premedication in horses and other large animals. Hydroxydetomidine is a metabolite of Detomidine. The substance is classified as a Controlled Medication Substance on the FEI Equine Prohibited Substances List **(the FEI List)**.

6. The positive finding of Hydroxydetomidine in the Horse's sample gave rise to a FEI Equine Controlled Medication Rule **(ECMR)** Violation.

### **III. Initial Proceedings**

7. On 2 May 2019, the FEI Legal Department officially notified the PR and the MEX-NF of the presence of the Prohibited Substances in the A sample, the Rule Violation and the potential consequences **(the Notification Letter)**. The Notification Letter informed the PR and the MEX-NF of a violation of Article 2.1 of the ECMRs (*The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*), based on the laboratory's Adverse Analytical Finding **(AAF)** of Hydroxydetomidine in the Sample.
8. The PR was also informed that in accordance with Art. 7.4.1 of the ECMRs, the PR was not provisionally suspended as the AAF involved only one Controlled Medication Substance.
9. In accordance with Art. 7.1.4 (c) of the ECMRs, the PR was provided with the right to request the B Sample analysis. The PR did not exercise his right to request a B Sample analysis.

### **IV. Procedural background in front of the FEI Tribunal**

10. By email dated 22 March 2021, the FEI submitted the matter to the FEI Tribunal for the appointment of a hearing panel.
11. On 30 March 2021, the Parties were informed of the nominated one-person hearing panel appointed to address this case. The Parties were asked to provide any objections to constitution of the hearing panel by 2 April 2021. The PR was also granted the opportunity to respond to the FEI's allegations by submitting their respective positions by 7 April 2021. The PR was also informed that the Tribunal will generally decide such cases based on written submissions however the Parties were informed that they had the right to request an oral hearing by 7 April 2021, failing which the right for an oral submission would be deemed as waived.
12. On 30 March 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.

- 13.** On 6 April 2021, the Legal Representatives of the PR- Morgan Sports Law submitted a letter to the Tribunal which confirmed that the PR had instructed them to represent him in these proceedings. On the same date they submitted proof in respect of their Power of Attorney to do so. The Legal Representatives also requested an extension to the deadline to submit the Response of the PR - until 28 April 2021 and confirmed that the FEI were aware of this request and had no objection with this extension.
- 14.** On 8 April 2021, the Tribunal issued a letter to the Parties and noted the request by the PR to seek an extension to issue their Response to the proceedings. The Tribunal also requested that the FEI provide their confirmation in writing that they were in agreement with said extension.
- 15.** On 8 April 2021, the FEI confirmed their agreement via email with the requested extension (until 28 April 2021) of the PR.
- 16.** On 28 April 2021, the PR submitted his Response and Exhibits to the proceedings.
- 17.** On 20 August 2021, the FEI informed the Tribunal that the Parties had entered into settlement discussions. The FEI informed the Tribunal that they would provide a duly signed Settlement Agreement in due course. In addition, the FEI informed the Tribunal that the PR had voluntarily provisionally suspended himself as of 22 July 2021.
- 18.** On 16 September 2021, the Parties submitted the proposed Settlement Agreement with Exhibits signed by both the PR and the FEI, to the Tribunal for approval and adjudication. The FEI also explained that due to the application of Art. 10.10.2 of the ECMRs (*Delays Not Attributable to the Person responsible and/or member of the Support Personnel*) the parties had agreed to start the Period of Ineligibility at an earlier date i.e., on 22 May 2021. Consequently, the FEI noted that in the event that the Tribunal approve the Settlement Agreement the PR would have served his Period of Ineligibility on 21 September 2021 at midnight. In this regard the FEI requested for the voluntary Provisional Suspension to be lifted on 21 September 2021, pending the review of the Settlement Agreement.

## **V. The Parties' Submissions**

### **A. The Submissions of the PR:**

- 19.** The PR admitted the Rule Violation and provided his explanation through several written submissions dated between 6 July 2019 and 28 April 2021, wherein he explained how the Controlled Medication Substance entered

the Horse, these submissions can be summarised as follows:

- The PR stated that he was aware that Detomidine was a Controlled Medication Substance prohibited *in-competition* but permitted *out-of-competition*, as long as it had cleared in the Horse's system prior to competition. Additionally, the PR knows that the Detection Time for Detomidine is 48 hours as per the FEI's List of Detection Time. Based on advice from his veterinarian (who is an FEI Permitted Treating Veterinarian), the PR usually allowed a withdrawal time of 72 hours between the administration of the medication and competition;
- The PR explained that his groom administered Detomidine regularly to the Horse, to keep it calm in stressful situations, for example when its hooves are being trimmed or when it is travelling. As the Horse is a stallion it needs to be kept calm in order to protect its well-being and avoid causing dangerous situations;
- Following the notification of the Rule Violation, the PR enquired with his groom about the potential source of the positive test. The PR was aware that the groom had administered a dose of 0.5 cc of Detomidine intravenously to the Horse on 25 March 2019 – three days before the Event – and was not aware of any other administrations between that date and the Event. Therefore, the PR presumed that this must have been the source;
- However, after a scientific analysis was performed, the PR learnt that a dose of 0.5 cc of Detomidine on 25 March 2019 would not result in an AAF on 28 March 2019, i.e., 3 days later. After explaining this to the groom, the groom ultimately revealed that he had administered another dose of 0.5 cc of Detomidine intravenously to the Horse on 27 March 2019 at midday. The groom apologised for the dishonesty and explained that he had not told the PR the truth previously because he was concerned about jeopardising his career. The groom knew he had made a mistake and was ashamed of his error;
- The PR therefore submitted that he has established, on the balance of probabilities, that the positive test was caused by the groom's unauthorised administration of Detomidine on 27 March 2019;
- The PR furthermore submitted that he bears no significant Fault or Negligence for the Rule Violation as he took all reasonable measures to avoid a Controlled Medication Rule Violation, however, on this occasion, the groom administered Detomidine without the PR's knowledge and against his instructions; and
- The PR also submitted an Expert Report, the groom's witness statement, the veterinarian's witness statement and his own witness statement in support of his explanation.

**B. The Response of the FEI highlighted the following:**

- 20.** The FEI submitted that taking into account the FEI List of Detection times<sup>1</sup>, the FEI was satisfied that the intravenous injection of Detomidine administered to the Horse on 27 March 2019 i.e., on the day preceding the Sample collection, could reasonably have caused the AAF. The FEI was therefore satisfied that the PR established, on a balance of probabilities, how Hydroxydetomidine (a metabolite of Detomidine) entered the Horse's system.
- 21.** The FEI further noted that they had been presented with previous instances of AAFs resulting from *out-of-competition* administration of Controlled Medication(s) due to ignorance or miscalculation of the detection and/or withdrawal times.<sup>2</sup> In those cases, the FEI found the PRs to be at *no significant Fault* and reduced to some extent the applicable period of Ineligibility, as Controlled Medications are permitted *out-of-competition* and are commonly used in equine medicine. Similarly, in previous instances of AAFs<sup>3</sup> wherein the PRs had certain anti-doping protocols in place in order to avoid a Rule violation, yet an unauthorized administration of medication occurred, it was found that the PRs were at *no significant fault* for the Rule Violation. Consequently, in the case at hand, the FEI also deemed the PR to be at *no significant fault* for the Rule Violation.
- 22.** In evaluating the level of PR's fault or negligence within the legal category of *no significant Fault*, the FEI took into account in particular the following considerations:
- The PR was aware of Detection and Withdrawal Times and sought advice from his veterinarian when administering medications;
  - The PR was aware that Detomidine is prohibited *in-competition* and furthermore that its detection time is 48 hours when administered intravenously. The PR applied a 72 hours of withdrawal time for the administration on 25 March 2019 – therefore the FEI acknowledged that the PR took reasonable steps to avoid committing an ECMR Violation and by doing so, the PR exercised due diligence in that respect;
  - However, the FEI considered that repeated treatments of Detomidine, not only on this occasion but also on one other occasion, appeared to have been administered intravenously by the groom who, although highly experienced, was not qualified to perform veterinary treatments. Despite the PR's unawareness of the groom's administration of the Prohibited Substance on 27 March 2019, the administration of the Detomidine by the groom – a non-qualified

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<sup>1</sup> The Detection Time for Detomidine is 48 hours when administered intravenously.

<sup>2</sup> For example Case 2019/CM18 ELBRUS, 2018/CM14 MORA INOCENTE, 2018/CM15 EL PANGUE CIROMAGNUM.

<sup>3</sup> For example Case 2020/BS04 GUCCI and 2018/BS19 DOLLY PALO BLANCO

person - on the 25 March 2019 was performed with the knowledge and approval of the PR. Additionally, the FEI noted that it appeared the veterinarian was aware of intravenous administrations of a Prohibited Substance by a non-qualified person as he provided advice thereof: *"I advised the PR that he can administer Detomidine to the Horse but he must allow sufficient time for the drug to leave the Horse's system before events (because it is a Controlled Medication)"* (Witness Statement by the Veterinarian).

- Consequently, the FEI regarded the intravenous administration of a Prohibited Substance or any other substance, by a person who has not had the proper training and formal education to do so, extremely worrying as it could compromise the horse's welfare. The FEI considered this element of the case an aggravating factor despite the PR's commitment to change his practice in that regard;
- The FEI submitted that despite the PR having certain effective protocols in place to prevent an AAF, the PR accepted that serious anti-doping and horse welfare risks were apparent by allowing his groom to administer treatments. They furthered that it was highly likely the PR would have avoided a breach of the rules if he had not allowed his groom (a non-veterinarian) to perform treatments with Detomidine;
- Nevertheless, the FEI acknowledged that the PR promptly admitted the Rule Violation and was cooperative and transparent throughout the proceedings. The FEI noted that the PR also confirmed that his groom has undertaken further training with the veterinarian since the Rule Violation occurred.

**23.** Taking into account the totality of circumstances of the case in question, the FEI was of the opinion that the PR has on a balance of probabilities established that he bears no significant fault or negligence for the Rule Violation and that the Period of Ineligibility of four (4) months should be imposed.

**24.** The FEI also confirmed that the PR voluntarily provisionally suspended himself as of 22 July 2021, therefore the already served period of Provisional Suspension shall be credited against the imposed Period of Ineligibility.

**25.** Furthermore, due to delays in processing this case, the FEI agrees to apply Art. 10.10.2 of the ECMRs (Delays Not Attributable to the Person responsible and/or member of the Support Personnel) resulting in the Period of Ineligibility to start at an earlier date i.e., on 22 May 2021, two months before the voluntary Provisional Suspension.

- 26.** Consequently, in addition to the disqualification of the result obtained at the Event, all the results achieved by the PR during the retroactive Period of Ineligibility (from and including 22 May 2021 to 22 July 2021 when the voluntary provisional suspension took effect) shall be disqualified.

## **VI. The Decision**

### **27. Agreement between the Parties (subject only to the approval of the Tribunal) on the following terms for the closure of the proceedings:**

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

- 3.1 In the matter of the AAF related to the Sample collected from the PR's Horse VITOT KERVEC at the CSI4\* in Balvanera, Mexico on 28 March 2019, the PR and the FEI agree in accordance with 7.6.1 ECMRs on the following:
- a) The PR admits the violation of Article 2.1 of the ECMRs (The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample);
  - b) The PR has established on a balance of probabilities how Hydroxydetomidine entered the Horse's system;
  - c) The PR bears no significant fault or negligence for the Rule Violation;
  - d) The applicable period of Ineligibility shall be four (4) months, commencing as of 22 May 2021, taking into account the already served period of voluntary provisional suspension;
  - e) In accordance with Articles 9.1 and 10.1.2 of the ECMRs 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;
  - f) In addition, all competitive results achieved by the PR during the retroactive Period of Ineligibility (from and including 22 May 2021 to 22 July 2021) shall be disqualified with all resulting consequences, including forfeiture of any related medals, points and prizes in accordance with Art. 10.10.2 of the ECMRs;
  - g) The PR shall pay a fine of 1`000 CHF;
  - h) Each party will bear its own legal and other costs incurred in connection with these proceedings;
  - i) No other Sanctions will apply in this case; and
  - j) This violation of the ECMRs shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8 of the ECMRs.

- 3.2 This agreement is made in accordance with Article 7.6.1 of the ECMRs 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 ECMRs.
- 3.3 The parties acknowledge and agree that pursuant to Article 13.3 of the ECMRs, 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\*\*

## **VII. Jurisdiction**

### **28.**

- (a) The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- (b) The PR is a member of the MEX-NF, and as such is subject to the FEI ECM rules.
- (c) Article 7.6.1 of the EADCMRs provides for agreements to be reached between parties.
- (d) As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

## **VIII. Approval of Agreement**

- 29.** Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the PR has established on a balance of probabilities how Hydroxydetomidine entered the Horse's system.
- 30.** The Tribunal also notes that the Parties agree pursuant to 7.6.1 ECM Rules that the PR bears no significant Fault or Negligence for the Rule Violation as the PR was able to establish a conclusive source of the Controlled Medication Substance.
- 31.** The Tribunal acknowledges that since the PR has been able to establish the source of the Controlled Medication Substance, the PR and the FEI have agreed on terms for the closure of proceedings in accordance with 7.6.1 ECM Rules as detailed at section 27 above in this Decision. Taking

into account the particulars of this case, no other sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9.1, 10.1.2 of the ECM Rules) will be applied in this case. Thus, the PR shall pay a fine of 1'000 CHF and no other sanction will apply in this case. The Tribunal also notes that each party will bear its own legal and other costs incurred in connection with these proceedings.

- 32.** The Tribunal wishes to highlight 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.
- 33.** To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the ECM Rules.
- 34.** 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 2019/CM15 VITOT KERVEC.

## **IX. Decision**

- 35.** The Tribunal rules that the Agreement reached between the FEI and the PR, Mr Arturo Vallejo concerning the Case 2019/CM15 VITOT KERVEC is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Article VI above, which are incorporated into this Decision.
- 36.** This Decision is subject to appeal in accordance with Article 12.2 of the ECM 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.
- 37.** This Decision shall be notified to the PR, to the President of the NF of the PR, and to the FEI.
- 38.** This Decision shall be published in accordance with Article 13.3 of the ECM Rules.

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

**a. The Parties: Yes**

**b. The President of the NF of the person sanctioned: Yes**

- c. The President of the Organising Committee of the Event through his NF: No
- d. Any other: No

**FOR THE FEI TRIBUNAL**



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**Mr Mohammed ALSaberi, One-Member Panel**