

DECISION of the FEI TRIBUNAL

dated 20 December 2022

in the matter of

Mr Felix VOGG (Athlete: Ref. C22-0035)

(FEI Case number: FEI 2022/HD02 –FELIXVOGG)

I. Composition of the FEI Tribunal Hearing Panel:

Dr Armand Leone (USA), one-member panel

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

- Statutes 24th edition, effective 17 November 2021 (“Statutes”).
- General Regulations, 24th edition, 1 January 2020, updates effective 1 January 2022 (“GRs”).
- Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (“IRs”).
- FEI Anti-Doping Rules For Human Athletes, effective 1 January 2021 (“ADRHAs”).
- FEI’s Endurance Rules, Updated 11th Edition, effective 1 January 2022 (“ERs”).
- The World Anti-Doping Code - International Standard – Prohibited List – January 2022 (“Prohibited List”).

III. General details of the case:

FEI Tribunal Reference: C22-0035 [FEI 2022 -HD02 Felix VOGG]

Athlete/ID/NF: Felix VOGG/10010431/SUI

Event/ID: CCIO4*-S in Aachen (GER)/28.06.2022-03.07.2022/ 2022_CI_0150_C_S_01

Date of Sample Collection: 1 July 2022

Prohibited Substance(s) [REDACTED]

[REDACTED] (Class S.6.B Specified Stimulants)

Bar Code No.: 7053389

IV. Factual background

1. Mr Felix VOGG (FEI ID 10010431), is an Athlete competing for Switzerland in the discipline of Eventing (the "Athlete"). The Athlete competed with the horse CARTANIA, (the "Horse"), at the CCIO4*-S in Aachen (GER) held from 28 June until 3 July 2022 (the "Event").
2. The Fédération Equestre Internationale (the "FEI", together with the Athlete, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines of Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Para-Equestrian.
3. As a member of the Swiss Equestrian Federation (the "SUI-NF"), which is a member of the FEI, the Athlete is bound by the ADRHAs which specify the circumstances and conduct that constitute an Anti-Doping Rule Violation ("ADRV").
4. Urine samples were taken from the Athlete at the Event on 1 July 2022 for testing in line with the ADRHAs. The samples were divided into an A Sample and a B Sample and sent to the WADA Accredited Laboratory of Cologne (the Laboratory for Doping Analysis – German Sports University Cologne, Germany, the "Laboratory"). The Athlete's samples were given reference number 7053389 (collectively, the "Sample").
5. The Laboratory analysed the Athlete's A Sample and reported an Adverse Analytical Finding ("AAF") for [REDACTED] in the urine sample (the "Prohibited Substances"). [REDACTED] is included in the Class S.6.B Specified Stimulants according to the Prohibited List. [REDACTED] is prohibited in-competition only and designated as a Specified Substance.

V. Procedural background

6. Upon receipt of the AAF from the Laboratory, the FEI conducted a review of the case in accordance with Article 7.2 of the ADRHAs and the International Standard for Results Management (the "ISRM")¹, and determined that the Athlete did not have a Therapeutic Use Exemption ("TUE") and that there was no apparent departure from any of WADA's international standards.
7. On 27 July 2022, the FEI sent a letter to the Athlete (the "Notification Letter") stating, among others, that:
 - the Prohibited Substances were present in his Sample collected at the Event;
 - the positive finding of the Prohibited Substances in his Sample may constitute a violation of Articles 2.1 ADRHAs, Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample; and/or Article 2.2 ADRHAs, Use of a Prohibited Substance;
 - he was granted a 20-day deadline to provide an explanation in relation to the alleged Anti-Doping Rule Violations (the "ADRVs").
 - in accordance with Article 7.4.4 of the ADRHAs, the FEI did not provisionally suspend the Athlete because the Prohibited Substances detected in the Sample were Specified Substances. Nevertheless, the FEI informed the Athlete that in accordance with Article 7.4.4 of the ADRHAs, the Athlete had a right to voluntarily accept a provisional suspension however the Athlete did not elect for this option.
 - he had the right to request analysis of the B Sample within 10 days of the notification of that letter.
8. The Athlete did not request the B Sample analysis and in accordance with the Article 5.1.2.1(c) of the ISRM by failing such request the B sample analysis was irrevocably waived.
9. On 31 August 2022, the Athlete applied for a prospective and retroactive Therapeutic Use Exemption (the "TUE") to the FEI TUE Committee (the "TUE Committee") in accordance with the ADRHAs and the International Standard for Therapeutic Use Exemptions² (the "ISTUE").

¹ WADC International Standard for Results Management,

https://www.wada-ama.org/sites/default/files/resources/files/international_standard_isrm_-_final_english_-_post_exco_20_may_2021.pdf.

²WADC International Standard for Therapeutic Use Exemptions, available at: https://www.wada-ama.org/sites/default/files/resources/files/international_standard_istue_-_2021.pdf.

10. The FEI submitted that the prospective TUE for [REDACTED] was approved by the TUE Committee on 10 September 2022 for the period starting on 12 September 2022 and ending on 11 September 2024. However, the retroactive TUE for [REDACTED] was denied by the International Therapeutic Use Exemption Committee. No appeal was lodged against the Decision of the International Therapeutic Use Exemption Committee.
11. By way of a letter dated 20 September 2022 (the “Notice of Charge”), the FEI formally notified the Athlete of the alleged violations of the ADRHAs. The Athlete was given a deadline of 20 days to either:
 - admit the asserted violations and accept the proposed consequences of a two (2) year period of ineligibility, a fine of 7 500 CHF, a contribution towards legal costs of 3 000 CHF, disqualification of his results at the Event disqualification of all other competitive results obtained from the date a positive Sample was collected until the commencement of any provisional suspension or ineligibility period, and an automatic publication of the sanctions (the “Proposed Consequences”);
 - provide additional information to establish that a lower – or no – sanction was warranted; or
 - challenge in writing the alleged violations of the ADRHAs and/or the Proposed Consequences.
12. On 30 September 2022, the Athlete filed his response to the Notice of Charge.
13. On 18 October 2022, the FEI submitted this matter for the attention of the FEI Tribunal (the “Tribunal”).
14. On 3 November 2022, the Tribunal Chair informed the Parties, among others, 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 10 November 2022.
15. On 3 November 2022, the FEI objected to the constitution of the hearing panel due to the appointee being an FEI Official in the discipline of Dressage and Para-Dressage and as such he did not fulfil the independence criteria mentioned in Article 8.1.1.2 of the ADRHAs.
16. On 7 November 2022, the Tribunal Chair informed the Parties that he accepted the FEI’s request to appoint a different panel member in order to meet the independence criteria contained in the ADRHAs and nominated a new panel member. Furthermore, the Tribunal Chair granted the Athlete with the opportunity to respond to the FEI’s

allegations about the AAF discovered in his system, by providing a statement of defence and any supporting evidence by 28 November 2022. The Tribunal Chair further informed the Athlete that should he fail to respond within the deadline, the Tribunal hearing panel would decide this case using the file material in its possession. Finally, the Tribunal Chair informed the Parties of their right to request an oral hearing.

- 17. On 10 November 2022, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
- 18. On 15 November 2022, the Athlete submitted a statement of defence by means of which he referred to his response to the Notice of Charge previously submitted to the FEI on 30 September 2022.
- 19. Neither party requested a hearing.

VI. Submissions by the Parties:

A. Submission by the Athlete

20. In reply to the FEI’s Notice of Charge, the Athlete submitted his explanation for this ADRV, which can be summarised as follows:

- i. The Athlete explained that he was diagnosed with [REDACTED] [REDACTED] in his early childhood.
- ii. The Athlete also provided a medical certificate dated [REDACTED] confirming the [REDACTED] diagnosis as well as the prescribed treatment [REDACTED] [REDACTED] [REDACTED] which was carried out in accordance with national and international guidelines. In this medical certificate, the Athlete’s treating doctor:

- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

iii. The Athlete provided a letter dated 30 September 2022 to the FEI in which he explained that he was convinced that his old TUE³ was still valid and it was not clear to him that this TUE would expire after a period of time. The Athlete stated that his belief was further reinforced by the fact that in the summer of 2021 he was tested by Anti-Doping Switzerland in training (out-of-competition) and he was not notified of any potential violation, so he believed that the TUE was working.

iv. The Athlete explained in his letter that he had suffered all his life from various problems linked to [REDACTED]

v. When the Athlete received the Notification Letter dated 27 July 2022 he spoke to his doctor, and he understood that a TUE expires after a period of time and that [REDACTED] is allowed in training (which he was not aware of until that point). This situation came as a big shock to the Athlete since he did not want to do anything wrong or unfair, and this was the reason why he had previously applied for and obtained a TUE.

vi. The Athlete reiterated that when he was tested at the Event, he freely indicated

³ For the record, the Athlete had a TUE in the past for [REDACTED]

on the Doping Control Form that he was taking [REDACTED]

- vii. In addition, the Athlete's lack of proper understanding of the TUE system was due to the fact that he never received proper anti-doping education, only general information sessions from the national federation.

B. Submission by the FEI:

21. The FEI provided its response to the Athlete's position, which can be summarised as follows:
 - i. According to Article 3.1 of the ADRHAs, the FEI has the burden to establish that an ADRV has occurred to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation made.
 - ii. The FEI submitted that the results of the analysis of the A Sample taken from the Athlete at the Event confirm the presence of [REDACTED] [REDACTED] [REDACTED] in combination with the fact that the Athlete waived his option for an analysis of the B Sample which constituted sufficient proof of the violation of Article 2.1 of the ADRHAs (ADRHAs Article 2.1.2). The same facts constitute sufficient proof of a violation of Article 2.2 of ADRHAs.
 - iii. In any event, the FEI submitted that Athlete did not dispute his use of [REDACTED] [REDACTED] in his Sample. Quite to the contrary, the FEI noted that the Athlete provided evidence that he was using a medication [REDACTED] [REDACTED] on a daily basis as of March 2020, including during In-Competition periods⁵.
 - iv. Accordingly, the FEI submitted that they had discharged their burden of establishing that the Athlete had violated Article 2.1 (Presence of a Prohibited Substance in an Athlete's Sample) and Article 2.2 (Use by an Athlete of a Prohibited Substance) of the ADRHAs.
 - v. Article 10.2 of the ADRHAs provide that an Athlete with no previous doping offences who violates Article 2.1 and/or 2.2 of the ADRHAs and whose violation

⁴ Doping Control Form 1 July 2022 and Laboratory Test Report 21 July 2022.

⁵ Medical Certificate dated 7 October 2022.

involves a Specified Substance is subject to a period of Ineligibility of two years⁶ (four years if the FEI can establish that an anti-doping rule violation was intentional⁷), unless the Athlete is able to rebut the presumption of significant Fault or Negligence. In order to do this, the rules specify that the Athlete must establish to the satisfaction of the FEI Tribunal (it being the Athlete's burden of proof, on the balance of probability⁸):

- How the Prohibited Substances (here, ██████████) entered his/her system; and
 - That he/she bears No Fault or Negligence for that occurrence, i.e., that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she has Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule (in which case, the presumptive two-year period of Ineligibility will be eliminated completely pursuant to Article 10.5 of the ADRHA); or
 - That he/she bears No Significant Fault or Negligence for that occurrence, bearing in mind the definition of No Fault or Negligence, i.e., the duty of utmost caution (in which case, the presumptive two-year period of Ineligibility may be reduced depending on his/her degree of Fault, pursuant to Article 10.6 of the ADRHA).
- vi. If the Athlete fails to discharge the burden, the presumptive two-year ban under Article 10.2 of the ADRHAs applies.
- vii. In respect of the 'threshold' requirement: proving how the ██████████ entered into Athlete's system, the FEI submitted that in accordance with the ADRHAs and the jurisprudence of the FEI Tribunal and the Court of Arbitration for Sport (the "CAS"), that it is strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the Athlete proves how the Prohibited Substance entered into his system.
- viii. Furthermore, the FEI noted that this requirement must be strictly applied because without such proof it would be impossible to assess the Athlete's degree of Fault or Negligence for the presence of the Prohibited Substance in his body.

⁶ Art. 10.2.2 ADRHA.

⁷ Art. 10.2.1.2 ADRHA.

⁸ Art. 3.1 ADRHA.

- ix. The FEI submitted that from [REDACTED] the Athlete confirmed that he was prescribed by his treating doctor and started to use [REDACTED] medication [REDACTED], which replaced his previous [REDACTED] medication for which he had a TUE issued by the FEI. The change in medication was necessary because the Athlete was suffering from significant adverse side effects [REDACTED] [REDACTED] from his previous [REDACTED] medication. These facts were confirmed by a medical certificate from the Athlete's treating doctor.
- x. In addition, the FEI noted that on [REDACTED] the Athlete obtained a prospective TUE for [REDACTED] from the FEI TUE Committee that confirmed the Athlete's medical diagnosis as well as the appropriateness of the treatment.
- xi. Consequently, the FEI confirmed they were satisfied that the Athlete had discharged his burden of proof of establishing how [REDACTED] entered his body and the "threshold requirement" was fulfilled in this case.
- xii. In terms of the degree of Fault and Negligence by the Athlete for the ADRV, the FEI submitted that the starting point of any evaluation is the 'personal duty' of the Athlete following from Article 2.1.1 and 2.2.1 of the ADRHAs, i.e., his personal duty to ensure that no Prohibited Substance enters his body.
- xiii. Furthermore, the FEI stated that in accordance with Article 4.4.1 of the ADRHAs wherein it provides that '*The presence of a Prohibited Substance or its Metabolites or Markers, and/or the Use or Attempted Use, Possession or Administration or Attempted Administration of a Prohibited Substance or Prohibited Method, shall not be considered an anti-doping rule violation if it is consistent with the provisions of a TUE granted in accordance with the International Standard for Therapeutic Use Exemptions.*'
- xiv. The FEI explained that in order to assess the level of Fault or Negligence of the Athlete in this case, it is necessary to look at the definitions of *Fault*, as defined in Appendix 1 of the ADRHAs:

"Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing

the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.

No Fault or Negligence: The Athletes or other Persons' establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.

No Significant Fault or Negligence: The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system".

- xv. The FEI explained that the Athlete originally consulted a doctor and was properly diagnosed with [REDACTED], thereafter he was prescribed medication for which he sought and obtained a TUE. Due to adverse side effects, the Athlete later consulted the same doctor and obtained a prescription for a new [REDACTED] medication [REDACTED]. However, the Athlete failed to apply for and obtain a new TUE before competing in International Competitions as required by the ADRHA. His fault therefore lies in failing to obtain a TUE in advance of competing with [REDACTED] in his system.
- xvi. The Athlete explained to the FEI that despite being a high-level athlete he never received proper anti-doping education and as a result he did not have a proper understanding of the TUE system until he received the Notification Letter dated 27 July 2022. The Athlete asserted that he was not aware that TUEs had an expiry date or that TUEs were granted for specific medications (that contain Prohibited Substances) and not for a "medical condition" (which would give a blanket approval for any medication treating this condition). The Athlete's belief that his old TUE "was still working" was reinforced, albeit mistakenly, by the fact

that in 2021 he was tested Out-of-Competition by Anti-Doping Switzerland and he was not notified about any irregularities at that time.

- xvii. However, despite the latter explanations, the Athlete had a “personal duty” to make sure that he obtained and made himself familiar with the provisions in the ADRHAs that explain when and how to apply for a TUE.⁹ Further, by failing to apply for a TUE in advance of his use of ██████████ in competition, the Athlete “circumvented the safeguards built into the rules to ensure fairness to other competitors”. Had the Athlete applied for a TUE in advance, it is likely that he would have been granted the TUE and this case would never have arisen. As a result, the fairness of competition was not affected. However, that does not excuse the Athlete’s fault¹⁰. Rather, the FEI submitted that it only limits the consequences of his failure to abide by his responsibilities¹¹.
- xviii. Based on the above, whilst the FEI submitted that the Athlete took a number of steps expected of him in order to discharge his anti-doping responsibilities, he failed to identify and comply with the relevant TUE requirements. As a competitor in international-level competition, he is expected to become familiar with all of the requirements of the applicable rules and cannot blame anyone else for failing to tell him what was expected of him.
- xix. In accordance with continuous CAS jurisprudence, the Athlete therefore could not establish that he bore No Fault or Negligence¹².
- xx. However, taking into account the nature of this case and the relevant CAS jurisprudence,¹³ the FEI considered that the Athlete’s Fault or Negligence, when viewed in the totality of the circumstances, was not significant in relation to the ADRV.
- xxi. Given that ██████████ is a Specified Substance, and that it is accepted that the Athlete bears No Significant Fault or Negligence, the FEI submitted that Article 10.6.1.1 of the ADRHAs applies. Furthermore that such provision provided for a range of sanctions varying from a warning to two years of

⁹ See for example: WADA v Sundby & FIS, CAS 2015/A/4233, para 105 (“The Athlete’s fault lies indeed in failing to request a TUE, the grant of which would have enabled him to compete without breach of the rules”).

¹⁰ See for example: WADA v Nilforushan and FEI, CAS 2012/A/2959, para 8.20.

¹¹ See Stewart v Federation Internationale de Motocyclisme, CAS 2015/A/3876, para 84; WADA v Sundby & FIS, CAS 2015/A/4233, paras 119-120; WADA v Stauber & Swiss Olympic Association, CAS 2006/A/1133, para 39(d).

¹² See for example: Nose v Slovenian Cycling Federation, CAS 2007/A/1356, and WADA v Stauber, CAS 2006/A/1133.

¹³ See for example: Nose v Slovenian Cycling Federation, CAS 2007/A/1356; Stewart v Federation Internationale de Motocyclisme, CAS 2015/A/3876; WADA v Stauber & Swiss Olympic Association, CAS 2006/A/1133; WADA v Sundby & FIS, CAS 2015/A/4233; Dominguez v FIA, CAS 2018/A/5904.

Ineligibility, depending on the Athlete's degree of Fault: *'Where the anti-doping rule violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.'*

- xxii. In order to assess the appropriate sanction in this matter, the FEI referred to the legal analysis provided in the *Cilic* CAS award to explain how to determine the length of a period of ineligibility within a range.

In short, the CAS Panel in the *Cilic* matter decided that:

'The decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanctions is fault. There are three degrees of fault which can be applied to the possible sanction range of 0 – 24 months: (a) significant degree of or considerable fault, with a sanction range from 16 to 24 months, and a "standard" significant fault leading to a suspension of 20 months; (b) normal degree of fault, with a sanction range from 8 to 16 months, and a "standard" normal degree of fault leading to a suspension of 12 months; (c) light degree of fault, with a sanction range from 0 to 8 months, and a "standard" light degree of fault leading to a suspension of 4 months. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities. The objective element should be foremost in determining into which of the three relevant categories a particular case falls. The subjective element can then be used to move a particular athlete up or down within that category. In exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.'

- xxiii. In the case at hand, the FEI noted the following elements:

Against the Athlete:

- a) the Athlete was an experienced International-Level Athlete competing at a high level of the sport; and

b) the Athlete took no actions to check the new [REDACTED] medication prescribed to him by his doctor, and assumed that his previous TUE was still valid, without checking the applicable rules or asking his doctor or the FEI.

In favour of the Athlete:

a) his fault lies not in his use of [REDACTED] in and of itself, but rather in failing to apply for and obtain a TUE for [REDACTED] before competing as required by the ADRHAs;

b) the Athlete did not intend to cheat as demonstrated by the fact that he was open about his medical condition and the prescribed treatment both at the time of the doping control (the Athlete declared [REDACTED] on the Doping Control Form) as well as during these proceedings;

c) the Athlete used [REDACTED] upon prescription by a doctor;

d) the Athlete has a medical condition that requires the administration of [REDACTED];

e) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

f) the Athlete's treating doctor also confirmed that, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

- xxiv. Having regard to all of the circumstances of the case, both in light of its objective and subjective elements, and especially the fact that there was medical justification for the Athlete's use of [REDACTED]
[REDACTED]
[REDACTED] the FEI deemed that the Athlete's degree of fault was ultimately "light".
- xxv. The FEI stated that in two recent FEI Tribunal cases wherein athletes failed to apply for a TUE before competing¹⁵, the athletes were each sanctioned with a period of Ineligibility of two (2) months. Those athletes were also considered International Level Athletes, although they did not compete at as high a level as the Athlete. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- xxvi. Having considered all the specific facts in issue as set out above, the FEI was satisfied that a period of Ineligibility of two (2) months was proportionate to the ADRV at issue¹⁶.
- xxvii. The FEI submitted that in respect of the disqualification of results, Article 9 of the ADRHAs provided that an ADRV *'in connection with an In-Competition test automatically leads to Disqualification of the result(s) obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes'*. This rule is automatic and must be applied even if the period of Ineligibility is reduced or eliminated under Article 10 of the ADRHAs, e.g., on the basis of No (or No Significant) Fault or Negligence.
- xxviii. Furthermore, the FEI noted that Article 10.1 of the ADRHA provides that *'An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the FEI Tribunal, lead to Disqualification of all of the Athlete's results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.2. Factors to be included in considering whether to Disqualify other results in an Event might*

¹⁵ See: [Decision of the FEI Tribunal dated 7 December 2020 in the matter of Jaana KIVIMAKI](#) and [Decision of the FEI Tribunal dated 4 January 2021 in the matter of Tsutomu INOUE](#).

¹⁶ Even though the Athlete was charged with two violations, namely Articles 2.1 and 2.2 of the ADRHA, in accordance with the Article 10.9.3.1 of the ADRHA those two violations are considered together as one single first violation. The same sanctioning regime applies to both violations.

include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions.'

- xxix. The FEI submitted that the Athlete acknowledged that he was using [REDACTED] on a daily basis from [REDACTED]. Therefore, it was clear why [REDACTED] were present in the Athlete's body each day of the Eventing competitions and as such the FEI requested that all the results obtained by the Athlete at the Event must be disqualified with all resulting consequences in accordance with the Articles 9 and 10.1 of the ADRHA.
- xxx. In addition to the above, Article 10.10 of the ADRHAs provided that *'In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition)[...]through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.'*
- xxxi. The FEI noted that Athlete was not subject to a Provisional Suspension in this matter and did not elect to voluntarily accept one. Instead, the Athlete participated in several competitions while these proceedings were ongoing and when applying for a TUE.
- xxxii. The FEI confirmed that whilst International Therapeutic Use Exemption Committee ultimately rejected the Athlete's application for the retroactive TUE the FEI TUE Committee approved his prospective TUE application [REDACTED]. While all of the competitive results obtained by the Athlete from the date of sample collection until the commencement of any period of Ineligibility shall be disqualified under Article 10.10 of the ADRHAs, the FEI considered that any results obtained on or after the date the prospective TUE was granted [REDACTED] should not be disqualified on the basis that *'fairness requires otherwise'*.
- xxxiii. In respect of Fine and costs, the FEI referred to Article 10.12.1 of the ADRHAs wherein it provided that *'Where an Athlete or other Person commits an anti-doping rule violation, the FEI Tribunal may, in its discretion and subject to the principle of proportionality, elect to (a) have the FEI recover from the Athlete or other Person costs associated with the anti-doping rule violation and/or (b) fine the Athlete*

or other Person in an amount up to 15'000 Swiss Francs, and in accordance with the FEI Guidelines for Fines and Contributions towards Legal Costs¹⁷.'

- xxxiv. In addition, the FEI noted that Article 10.12.2 of the ADRHAs specify that *'The imposition of a financial sanction or the FEI's recovery of costs shall not be considered a basis for reducing the Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules.'*
- xxxv. The FEI submitted that the FEI Guidelines for Fines and Contributions towards Legal Costs provide, among other things, a suggested range for fines and legal costs in human doping cases where the Ineligibility period was reduced based on the No Significant Fault or Negligence provisions. In accordance with those Guidelines, the FEI requests that a fine of CHF 3'000 will be imposed on the Athlete, and that the Athlete will be ordered to pay CHF 1'500 as a contribution to the legal costs that the FEI has incurred in pursuing this matter.
- xxxvi. In Summary, the FEI requested the following prayers for relief against the Athlete:
- upholding the charge that the Athlete had violated Articles 2.1 and 2.2 of the ADRHAs;
 - imposing a period of Ineligibility of two (2) months on the Athlete, commencing from the date of the Final Decision;
 - disqualifying all results obtained by the Athlete at the Event, with all resulting consequences, including forfeiture of any medals, points, and prizes pursuant to ADRHA Articles 9 and 10.1;
 - disqualifying all other competitive results obtained by the Athlete from the date of sample collection (1 July 2022) until 11 September 2022 (inclusive), with all resulting consequences, including forfeiture of any medals, points, and prizes pursuant to ADRHA Article 10.10;
 - fining the Athlete in the amount of three thousand (3'000) CHF; and
 - ordering the Athlete to pay the amount of one thousand (1'500) CHF as a contribution to the legal costs that the FEI has incurred in these proceedings.

VII. Legal Analysis

¹⁷ FEI Guidelines for fines and contributions towards legal costs, available at: https://inside.fei.org/sites/default/files/FEI_Guidelines_Legal_Costs-Final-Effective_1_January_2021-Updates_05May2021.pdf.

Jurisdiction

22. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ADRHAs and Article 18 of the IRs. The Athlete is a member of the SUI-NF, which is a member of the FEI; therefore, the Athlete is bound by the ADRHAs.

Legal Discussion

23. 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.

The Athlete

24. In accordance with Art. 7.2 of the ADRHAs the Athlete is responsible for a violation of Article 2.1 and 2.2 under the ADRHAs.

Considering

25. The Athlete's sample confirmed the presence of [REDACTED] [REDACTED] Class S.6.B Specified Stimulants under the Prohibited List. As set forth in Article 2.1 of the ADRHAs, sufficient proof of an ADRV is established by the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A 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.
26. The Tribunal is further satisfied that the test results evidence the presence of [REDACTED] in the A Sample taken from the Athlete at the Event. [REDACTED] [REDACTED] are Prohibited Substances, the presence of which in an Athlete's system during an Event without obtaining a valid TUE Form is prohibited under Article 2.1 of the ADRHAs.
27. 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 ADRHAs.
28. Pursuant to Article 10.2 of the ADRHAs, the period of Ineligibility for an Athlete with no previous doping offences who violates Article 2.1 and/or 2.2 of the ADRHAs and whose violation involves a Specified Substance is subject to a period of Ineligibility

of two years¹⁸ (four years if the FEI can establish that an anti-doping rule violation was intentional¹⁹), unless the Athlete is able to rebut the presumption of significant Fault or Negligence. In order to do this the rules, specify that the Athlete must establish to the satisfaction of the FEI Tribunal (it being the Athlete's burden of proof, on the balance of probability²⁰) the criteria as set out at paragraph 21 (v) of this Decision and if the Athlete fails to discharge the burden, the presumptive two-year ban under Article 10.2 of the ADRHAs applies.

29. In cases brought under the ADRHAs, a strict liability principle applies as described in Article 2.1.1 of the ADRHAs. Once a ADRV has been established by the FEI, the Athlete has the burden of proving whether they bear "*No Fault or Negligence*" for the rule violation as set forth in Article 10.5 of the ADRHAs, or "*No Significant Fault or Negligence*," as set forth in Article 10.6 of the ADRHAs.
30. In order for Articles 10.5 and 10.6 of the ADRHAs to be applicable, the Athlete must establish as a threshold requirement how the Prohibited Substances entered his system.
31. The Athlete submitted in his evidence that since [REDACTED] he was prescribed an [REDACTED] medication [REDACTED] by his treating doctor, which replaced his previous [REDACTED] medication for which he had a TUE issued by the FEI. He furthered that the change in medication was necessary because he was suffering from significant adverse side effects [REDACTED] [REDACTED] from his previous [REDACTED] medication. These facts were confirmed by a medical certificate from the Athlete's treating doctor. In addition, on [REDACTED] the Athlete had obtained a prospective TUE for [REDACTED] from the FEI TUE Committee which confirmed the Athlete's medical diagnosis as well as the relevance of the treatment.
32. Consequently, the FEI Tribunal is satisfied that the Athlete has discharged his burden of proof in respect of establishing how [REDACTED] entered his body that the "threshold requirement" has been met i.e., establishing the source of the Prohibited Substance, in these proceedings. Therefore, the Tribunal finds that the Athlete is entitled to a reduction of the otherwise applicable period of Ineligibility under Articles 10.5 and 10.6 of the ADRHAs.

¹⁸ Art. 10.2.2 ADRHA.

¹⁹ Art. 10.2.1.2 ADRHA.

²⁰ Art. 3.1 ADRHA.

33. In terms of the degree of Fault and Negligence by the Athlete for the ADRV the starting point of any evaluation is the *'personal duty'* of the Athlete following from Article 2.1.1 and 2.2.1 of the ADRHAs, i.e., his personal duty to ensure that no Prohibited Substance enters his body. In order to assess the degree of Fault or Negligence and ultimately the appropriate sanction in respect of this case, the Tribunal takes in account the detailed submissions and jurisprudence referenced at paragraph 21 (i)-(xxxvi) of this Decision.
34. Bearing in mind the particulars set out by the FEI, especially the fact that medical justification for the Athlete's use of [REDACTED] has been established, that his [REDACTED] and exacerbated during the relevant period due to the COVID-19 pandemic, the Tribunal agrees with the FEI evaluation on the degree of fault and categorises the Athlete's degree of fault was ultimately "light".
35. The Tribunal also refers to the recent FEI Tribunal cases where Athletes failed to apply for a TUE before competing²¹, and those Athletes were each sanctioned with a period of Ineligibility of two (2) months. Although those Athletes did not compete at as high a level as the Athlete in the current case, the Athletes in the aforementioned ADHRAs cases did not suffer from any medical conditions [REDACTED] [REDACTED] which provided some justification for failing to apply for a TUE on time in the current proceedings.
36. The Tribunal therefore finds that the applicable period of Ineligibility of two (2) months is a proportionate sanction for the ADRV in question²² pursuant to Article 10.2 of the ADRHAs.
37. The Tribunal finds the FEI's request for fine of CHF 3'000, legal costs of CHF 1'500- is reasonable and in keeping with the *FEI Guidelines for Fines and Contributions towards Legal Costs*.
38. In addition and for reasons of ensuring a level playing field, the Tribunal disqualifies - in accordance with Articles 9 and 10.1 of the ADRHAs - all of the Athlete's individual results at the Event), including forfeiture of all medals, points and prize money and all other competitive results obtained by the Athlete from the date of sample collection (1 July 2022) until 11 September 2022 (inclusive), with all resulting

²¹ See: [Decision of the FEI Tribunal dated 7 December 2020 in the matter of Jaana KIVIMAKI](#) and [Decision of the FEI Tribunal dated 4 January 2021 in the matter of Tsutomu INOUE](#).

²² Even though the Athlete was charged with two violations, namely Articles 2.1 and 2.2 of the ADRHA, in accordance with the Article 10.9.3.1 of the ADRHA those two violations are considered together as one single first violation. The same sanctioning regime applies to both violations.

consequences, including forfeiture of any medals, points, and prizes pursuant to Article 10.10 of the ADRHAs.

VIII. Terms of the Decision

39. As a result, the Tribunal rules that the FEI has established an ADRV to the comfortable satisfaction of the Tribunal. Accordingly, the Tribunal confirms the following terms of this Decision:
- a) The Tribunal upholds the charge that the Athlete violated Article 2.1 and 2.2 of the ADRHAs.
 - b) The Athlete shall be suspended for a period of two (2) months as of notification of the present decision. The period of the Ineligibility will be effective from the day of the final decision and the Provisional Suspension (if any) served by the Athlete shall be credited against the imposed Ineligibility Period;
 - c) The Athlete is fined three thousand Swiss Francs (CHF 3 000).
 - d) The Athlete shall pay his part of the costs of these proceedings in the amount of one thousand five hundred Swiss francs (CHF 1 500).
 - e) This Decision shall be notified to the Athlete, Mr Felix Vogg, to his National Federation, the SUI-NF, WADA, and to the FEI.
40. In accordance with Article 10.14.1 of the ADRHAs, No Athlete or other Person who has been declared Ineligible or is subject to a Provisional Suspension may, during a period of Ineligibility or Provisional Suspension, participate in any capacity in a Competition or activity (other than authorised anti-doping Education or rehabilitation programs) authorized or organized by any Signatory, Signatory's member organization, or a club or other member organization of a Signatory's member organization, or in Competitions authorized or organized by any professional league or any international- or national-level Event organization or any elite or national-level sporting activity funded by a governmental agency.
41. In accordance with Article 10.14.3 of the ADRHAs, where an Athlete or other Person who has been declared Ineligible violates the prohibition against participation during Ineligibility described in Article 10.14.1 of the ADRHAs, the results of such participation shall be Disqualified and a new period of Ineligibility equal in length to the original period of Ineligibility shall be added to the end of the original period

of Ineligibility. The new period of Ineligibility, including a reprimand and no period of Ineligibility, may be adjusted based on the Athlete or other Person's degree of Fault and other circumstances of the case. The determination of whether an Athlete or other Person has violated the prohibition against participation, and whether an adjustment is appropriate, shall be made by the Anti-Doping Organization whose Results Management led to the imposition of the initial period of Ineligibility.

42. In accordance with Article 13.2 of the ADRHAs the Parties may appeal this decision before the CAS within twenty-one (21) days of the present notification.
43. This Decision shall be published in accordance with Article 14.3 of the ADRHAs.

FOR THE TRIBUNAL



Dr Armand Leone (USA), One-Member Panel