

DECISION of the FEI TRIBUNAL
2 February 2022

Case 2021/HA01 Mr Esam ZBIBI (PR; Respondent) and Mr Hicham GHARIB (APR; Respondent) –
Allegation of Horse Abuse by the Respondents

I. COMPOSITION OF PANEL

Mr Jose A. Rodriguez Alvarez (MEX), Chair
Ms Harveen Thauli (CAN), Member
Ms Valérie Horyna (SUI), Member

II. SUMMARY OF THE FACTS

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

III. Summary of Legal Authority

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

Statutes 24th edition, effective 19 November 2019 (“**Statutes**”), Arts. 1.4 and 38.

General Regulations, 24th edition, 1 January 2020, updates effective 1 January 2021, Arts. 118, 142, 159, 163, 164 and 167 (“**GRs**”).

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

FEI Code of Conduct on the Welfare of the Horse.

2. **Respondents:** Mr Esam ZBIBI (PR; FEI ID 10184793) and Mr Hicham GHARIB (APR; FEI ID: 10033790).

3. **Authority for Sanction:**

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

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

GRs Article 159.2:

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

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

[...]

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

GRs Article 164.1 (Types of Sanctions):

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

GRs Article 164.5 (Fine)

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

GRs Article 164.7 (Suspension):

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

GRs Article 164.12 (Offences)

"In addition to breaches of specific provisions of the FEI Rules and Regulations, the following is a list of other offences that the FEI may sanction:

- a) Incorrect Behaviour;
- b) Abuse of Horse;
- c) Acts defined as criminal by the national law and/or Swiss law ("Criminal Acts"); [...]

i) Breach of the FEI Code of Conduct on the Welfare of the Horse;

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

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

- a) Whether the action or omission resulted in an unfair advantage to the offender or an Athlete.
- b) Whether the action or omission resulted in a material disadvantage to any other person or body involved.
- c) Whether the action or omission involved the maltreatment of Horses.
- d) Whether the action or omission affected the dignity or integrity of any person involved in the sport.
- e) Whether the action or omission involved Fraud, violence or abuse or similar criminal acts.
- f) Whether the action or omission was deemed to be deliberate.”

GRs Article 164.14:

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

[...]

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

[...]

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

IV. DECISION

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

1. Factual Background and Charges by the FEI

- 1.1 The Fédération Equestre Internationale (FEI) is the IOC-recognised international governing body for the equestrian sport disciplines of dressage, jumping, eventing, driving, endurance, vaulting, reining, para-equestrian dressage and para-driving.
- 1.2 Mr Esam ZBIBI (the Respondent [FEI ID: 10184793] but referred to in the present decision as the "PR") is a jumping rider from Great Britain, who has been involved internationally in the equestrian sport for several years, and who has been competing at FEI level for the past 3 years.
- 1.3 In this respect, the PR competed with the Horse, HH Sigma (the "Horse") at the CSI3* in Abu Dhabi (UAE) on 25 February 2021 (the "Event").
- 1.4 Mr Hicham GHARIB (the Respondent [FEI ID: 10033790] but referred to in the present decision as the "APR" or, together with the PR, as the "Respondents"), and together with the FEI and the PR, the "Parties") is a Jumping Rider from Syria who also attended the Event. According to the FEI, by his presence and participation at the Event, and as a member of the Support Personnel, the Mr GHARIB is to be considered as an Additional Person Responsible in the present matter.
- 1.5 On 25 February 2021, FEI Officials reported to the FEI HQ that the PR and the APR used hind boots with pins on the Horse during the Event. The FEI Officials who reported the incident were the Foreign Judge, the Chief Steward and the President of the Ground Jury.
- 1.6 On 3 March 2021, the FEI notified the Respondents of the opening of an investigation against them, for allegations of abuse of horse in accordance with Art. 30 of the IRs, and Art. 142 and 164.12 of the GRs, with a short summary of the facts and evidence

gathered.

- 1.7 On 10 March 2021, the APR submitted his position, denying any wrongdoing.
- 1.8 On 29 March 2021, the PR submitted his position, denying any wrongdoing.
- 1.9 On 27 May 2021, the FEI decided to open disciplinary proceedings against the PR, who was informed by way of a Notification letter of the same day. The PR was presented with the various options offered to him pursuant to Art. 30.2 of the IRs.
- 1.10 On 28 May 2021, the FEI decided to open disciplinary proceedings against the APR, who was informed by way of a Notification letter of the same day. The APR was presented with the various options offered to him pursuant to Art. 30.2 of the IRs.
- 1.11 On 7 June 2021, the PR responded to the FEI's Notification Letter, denying once again any wrongdoing and refusing the administrative measures offered to him in accordance with Arti. 30.2 of the IRs.
- 1.12 On 8 June 2021, the APR responded to the FEI's Notification Letter, denying once again any wrongdoing and refusing the administrative measures offered to him in accordance with Arti. 30.2 of the IRs.

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

- 2.1 On 28 June 2021, the FEI submitted to the Tribunal its Response with respect to the Respondents, in two separate submissions.
- 2.2 On 1 July 2021, the PR's legal representative informed the Tribunal that they no longer represented the PR in the proceedings, and requested the Tribunal to directly refer to the PR in the present matter.
- 2.3 On 13 July 2021, the Chair of the Tribunal acknowledged receipt of the claims submitted by the FEI with respect to both Respondents, and informed the Parties of the composition of the three-member Panel appointed for the case, in accordance with Art. 19.1 of the IRs. The Chair of the Tribunal further informed the Parties that he considered that the cases against the PR and the APR were based on the same factual background and were therefore substantially similar, justifying, in the Tribunal's view, adjudicating them together, in application of Art.

23 let. c of the IRs. The Parties were granted a deadline until 16 July 2021 to submit any objections to the constitution of the Panel. Furthermore, the Respondents were required to submit, by 2 August 2021, their position, containing a statement of defence, any defence of lack of jurisdiction, any evidence and substantiated motions for the admission of evidence upon which the Respondents intended to rely, as well as their position on the recommended sanction.

- 2.4 On 14 July 2021, the APR's legal representative confirmed that he had no objection to the constitution of the Panel. The APR's legal representative further informed the Tribunal of the merging of two law firms and requested the Tribunal to address future correspondences to new email addresses he provided. The APR thus provided an updated Power of Attorney.
- 2.5 On 17 July 2021, the PR submitted his position in response to the FEI's claim, which will be addressed *infra*.
- 2.6 On 1 August 2021, the APR submitted his position in response to the FEI's claim, which will be addressed *infra*.
- 2.7 On 3 August 2021, the FEI confirmed that it had no objection to the constitution of the Panel.
- 2.8 On 14 August 2021, the APR requested the Tribunal for a receipt acknowledgment of his position submitted on 1 August 2021.
- 2.9 On 16 August 2021, the Tribunal acknowledged receipt of the respective correspondences submitted by the Respondents, as well as the FEI's indication having no objection to the constituted Panel. The Tribunal informed the Parties that the case file would be constituted of the claims submitted by the FEI on 28 June 2021, as well as the documents submitted by the PR and the APR on 17 July and 1 August 2021, respectively. Finally, and as no Party requested for an oral hearing to take place, the Tribunal informed the Parties that the present matter would be under review and a decision, based on the file, would be notified to the Parties in due course.
- 2.10 On 17 August 2021, the APR's legal representative requested once more that all future correspondence in the present case be addressed to updated email

addresses, which was acknowledged by the Tribunal by email of the next day.

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

3. Written Submissions by and on behalf of the PR

3.1 The PR provided his position on three occasions. First, on 29 March 2021, he responded to the FEI's opening of an investigation. Then, on 7 June 2021, the PR confirmed his previous position, in response to the FEI's Notice of Charge dated 27 May 2021. Finally, the PR submitted his statement of defence, in the context of the Tribunal proceedings, on 17 July 2021. As previously stated, the Tribunal will summarise only the most relevant evidence required for this decision.

3.2 The PR submitted his response to the FEI's opening of an investigation on 29 March 2021. In summary, the PR stated the following.

3.2.1 He is a young rider, who has been involved in FEI-related events for just two years. He is therefore a mere amateur rider, and had no expectations to win at the Event, nor was he under any pressure to do so. Show jumping is a hobby for the PR, who is mostly trying to gain experience and improve his skills.

3.2.2 The PR admits being the Horse's PR, as the Owner of the Horse, and is fond of him. The PR considers the Horse as his partner in the sport, and the Horse's health and wellbeing is the PR's main priority. The PR trains and grooms the Horse every day, and ensures that he is stabled in the best possible conditions.

3.2.3 Usually, the PR works with a groom he knows and trusts, from the Sharjah Equestrian and Racing Club (where the Horse is stabled), i.e. Mr Ali Ahmad Allaham. Unfortunately, Mr Allaham – who is FEI registered and never had any disciplinary incident – fractured his arm shortly before the Event, which he could thus not attend as a groom. In support of his position, the PR submitted a diagnosis from Zulekha Hospital dated 22 February 2021. The PR thus had to hire another groom on short notice and hired Mr Mohamad Hamoud Dib in this respect.

3.2.4 The PR instructed Mr Dib to prepare and tack up the Horse. The PR had no

idea that Mr Dib would use the hind boots which are at the centre of the present case. The PR had never seen those boots before, and would have never given the permission to Mr Dib to use those boots.

- 3.2.5 Following the incident, the PR inspected the Horse with the Chief Steward, and immediately fired Mr Dib. The PR further indicated that he would never work with Mr Dib again.
 - 3.2.6 The PR accepts the yellow warning card he received at the Event, as well as the Disqualification pronounced against him, and thus fully accepted the sanctions already imposed on him.
 - 3.2.7 Since the incident, the PR participated in four CSI 2 * events, two of which competing with the Horse. He did not encounter any issue in this respect.
 - 3.2.8 In the future, the PR will only attend competitions when he can ensure to work with his trusted support personnel.
- 3.3 On 7 June 2021, the PR submitted a very brief letter, simply indicating that he denies the alleged infringements, and choses to have his liability and any applicable sanctions determined by the Tribunal, in accordance with Art. 30.2 of the IRs.
- 3.4 On 16 July 2021, the PR submitted an additional statement – upon request from the Tribunal – in the context of the Tribunal proceedings. In summary, the PR stated the following additional information.
- 3.4.1 The PR decided to represent himself, without legal representation, due to his difficult financial situation.
 - 3.4.2 At the Event and directly afterwards, the PR has been under constant pressure from the FEI officials, and was not able to properly investigate the matter, which he could do only later on. In particular, the PR met with Mr Dib various times after the incident took place, and Mr Dib assured the PR that he never placed the alleged boots on the Horse. In support of his position, the PR provided a witness statement from Mr Dib.
 - 3.4.3 The PR always denied having ever seen the hind boots, and never admitted having seen them, contrary to what the Chief Steward alleged in his

Additional Report.

- 3.4.4 The Chief Steward took pictures of the boots next to the PR's Horse, but before informing the PR of the allegations against him. The PR only learned about the allegations when he went, with the Chief Steward, to the Judges' box, but then the pictures had already been taken.
- 3.4.5 The PR would never allow any abuse of his horse, of any kind or nature.
- 3.4.6 The Horse went through the veterinarian examination on 23 February 2021, and was cleared to take part in the Event on 24 February 2021. The Horse was brought to the warm up arena, and the PR competed with the Horse that day.
- 3.4.7 On 25 February 2021, the PR was waiting outside the warm up arena with friends and fellow riders, including the APR, for the groom to bring the Horse. The stable where the Horse was located was more than 100 meters away. The groom then proceeded to put on the hind boots. The PR did not check the hind boots, but did not notice anything unusual when the groom was putting them.
- 3.4.8 The PR then started to ride the Horse, and jumped a couple of times. But he noticed that something was wrong with his Horse, and wanted to put another pair of boots. As he was not able to locate his groom, he asked the APR, who was around, whether he could help him out removing the hind boots, which the APR did.
- 3.4.9 Then the PR noticed the Chief Steward going to the other side of the warm-up arena, talking to someone who handed him a pair of horse boots. The Chief Steward then approached the PR, took the pictures of the boots next to the Horse, and told the PR that he would not be allowed to enter the competition and then went to the Judges' box. The PR had no opportunity to object or provide any explanations. The pictures were taken without the PR's consent or approval.
- 3.4.10 The PR was then called, with the APR, to the Judges' box, where he was confronted by the Chief Steward. The PR was shocked, and indicated having no idea as to who would have put the boots on the Horse. The PR

had no real opportunity to challenge the Chief Steward's findings, but he did not want to argue with FEI officials, as he was not well aware of the proceedings.

- 3.4.11 The PR was given a yellow warning card, disqualified and sanctioned, which he accepted and left the Event. At no time was the PR informed that there would be a further procedure for horse abuse. To the contrary, the Foreign Judge Report and the President of the Ground Jury Report mentioned that the APR would be reported for horse abuse, but nothing was mentioned with respect to the PR, since the sanctions already taken against him were sufficient.
- 3.4.12 The PR is certain that the person who handed over the boots to the Chief Steward handed wrong boots, but he is not able to indicate whether this was done intentionally or unintentionally. The Chief Steward never checked the boots before or during the warm-up, nor did a vet come to inspect the Horse (even after the incident). He can therefore not be sure that the boots, which were handed over to him, were the Horse's boots.
- 3.4.13 The Chief Steward examined the Horse only on 26 February 2021, i.e. one day after the incident. At this occasion, a video was taken in addition to photos, which showed limb sensitivity and marks all over the Horse's body, including the neck. Those marks were caused because of the Horse's history of allergy, which resulted in sudden and immediate horse limb sensitivity, contrary to the Chief Stewards' conclusions.
- 3.4.14 The Steward indicated that the APR was the Horse's trainer at the Event, which is false as the APR was competing in the same class as the PR, and was simply waiting for his horse in the arena.
- 3.4.15 Furthermore, the Chief Steward indicated that there was blood on the Horse, while in all the judges' reports, there is no mention of any blood on the Horse.
- 3.4.16 The FEI's claim dated 27 June 2021 is also erroneous, as it states that the FEI Veterinarian would have checked the Horse, while this never happened.

3.4.17 In the week following the incident, the PR asked the APR to ride the Horse, as he was terrified after what had taken place at the Event, and had the feeling that he was being watched by the officials. He was also under a big pressure from the equestrian community.

3.4.18 In terms of sanctions, the PR submitted that he never committed any violation in any national or international competition, in his entire riding history. The precedents mentioned by the FEI have no similarities with his case. The PR respects the FEI rules and regulations, and hopes for the Tribunal to come to a fair decision.

4. Written Submissions by and on behalf of the APR

4.1 The APR provided his position on three occasions. First, on 10 March 2021, he responded to the FEI's opening of an investigation. Then, on 6 June 2021, the APR confirmed his previous position, in response to the FEI's Notice of Charge dated 28 May 2021. Finally, the APR submitted his statement of defence, in the context of the Tribunal proceedings, on 1 August 2021. As previously stated, the Tribunal will summarise only the most relevant evidence required for this decision.

4.2 The APR submitted his response to the FEI's opening of an investigation on 10 March 2021. In summary, the APR stated the following.

4.2.1 The APR strongly denies all the allegations made against him. He is not the trainer of the PR's Horse (nor was he registered as such for the Event), but attended the Event as a rider only.

4.2.2 The APR only entered the warm-up arena as a rider, and not as a trainer or as support personnel.

4.2.3 The APR was waiting in the warm-up arena when the PR asked him to call his groom, Mr Dib, for him to remove the hind boots. Since the PR was about to start the warm up, the APR told him that he could remove the hind boots himself, and would then hand them over to the groom. He did so as a favour to his friend, but it could in no way be considered as work as support personnel, or creating a basis for alleged violations.

4.2.4 To the best of his recollection, the APR did not notice any nails or blood when

he removed the hind boots, contrary to what was written in the report. When the APR was shown the boots by the officials, he thus told them that those boots were not the same ones as the ones he had removed.

- 4.2.5 The groom was never asked to participate in the investigation. As per the APR, since he is not the PR nor support personnel, there was not much more he could have said. The APR received a yellow card and continued to attend the Event as a rider.
- 4.2.6 The warm-up arena was very busy, with more than 20 riders, in addition to trainers and grooms. Various accessories and horse equipment were lying on the ground, especially where the hind boots with nails were found and collected by the Chief Steward.
- 4.2.7 The APR has never been involved in any matter related to Horse Abuse. He has participated in national, regional and international competitions for many years, and is well known in the equestrian community in the region. The well-being of horses has always been his priority. The current allegations could have a very serious impact on the APR's reputation and could cause him irreparable harm.
- 4.2.8 The APR submitted, in support of his position, a witness statement from Mr Dib, attesting that he was never asked to show the boots and was never investigated by any of the officials or judges.
- 4.3 On 6 June 2021, the APR submitted a very brief letter, simply indicating that he denies the alleged infringements. The APR further informed of his decision to appoint a legal representative, and provided a duly signed Power of Attorney.
- 4.4 On 1 August 2021, the APR submitted an additional statement – upon request from the Tribunal – in the context of the Tribunal proceedings. In summary, the APR stated the following additional information:
 - 4.4.1 The APR has been riding in national and international competitions for 18 years, winning various competitions.
 - 4.4.2 The APR is currently facing a difficult financial situation. Single father of three children, and his career and reputation are the centre of his life and future.

- 4.4.3 The APR considers that the FEI's claim should be dismissed, as he was, at no time, either the trainer of the Horse or support personnel related to the Horse. Furthermore, the APR contests the FEI's claim alleging that he would be an APR because (i) he is registered with the FEI, (ii) he participated at the Event and (iii) he took a relevant decision about the Horse. The main response to a specific request from a friend cannot account for a decision made intentionally for a specific purpose. The APR had never ridden the Horse before the Event, and in any event, it is common for riders to lease their horses to other riders.
- 4.4.4 In summary, the APR cannot be considered as such for the following reasons:
- i. He was not registered as a trainer of the Horse for the Event;
 - ii. He is not registered as a trainer (but as a rider) in the UAE-NF;
 - iii. He did not act as a trainer during the Event (e.g. he did not give any instructions to the rider);
 - iv. He did not participate in the tacking of the Horse, including the boots (the boots were put by the groom);
 - v. A yellow warning card was issued to the rider only, as the PR. To the contrary, the fact that no such card was given to the APR shows that the judges were not convinced that the APR acted as an APR or support personnel;
 - vi. The fact that the APR and the PR were seen together by FEI officials is irrelevant and cannot be relied upon as evidence;
 - vii. There is no evidence on the record showing that the APR acted as a trainer or as support personnel;
 - viii. The APR rode the Horse at an international event held on 12 March 2021, upon the PR's request, since the latter was under stress and pressure following the current incidents;
- 4.4.5 There is not enough evidence, under the criminal law standard of proof beyond reasonable doubt (which should be applied here since the FEI considers that the APR committed a criminal act according to Swiss law), that the APR acted as an Additional Person Responsible in the present matter. The burden of proof lies on the FEI, and not on the APR.
- 4.4.6 The APR further considers that there have been several procedural deficiencies and breaches of the FEI Rules and Regulations by the FEI Officials, which are the following:

- i. The APR did not receive any warning card during the Event, and was not informed of any violation or action to be taken against him;
- ii. There was no Protest filed against the APR within the stipulated deadline, in violation of the GRs;
- iii. The photos and videos of the Horse were also taken after the relevant deadlines had elapsed;

4.4.7 In view of those procedural deficiencies, the FEI's claim should be declared inadmissible.

4.4.8 The procedure followed violated Art. 2.4 of the FEI Manual for Jumping Stewards and Veterinary Regulations. In particular, the rule by means of which the officials shall help, prevent and intervene was not respected, since the Steward did not react immediately when she noticed that something was wrong with the Horse. This is further evidenced by non-compliance with rules provided by the annexes to the FEI Manual for Jumping Stewards and Veterinary Regulations:

- i. Annex XI – Bandage and Tack Control during FEI Events, Article 1047.3, which provides that the FVD/VD must be made aware by the Chief Steward that the examination of boots is taking place;
- ii. Annex XI – Bandage and Tack Control during FEI Events, Article 1047.10, which provides that the Ground Jury must be informed immediately if the examination results in the finding of suspicious material, irritation, skin damage or abnormal sensitivity of the limbs;
- iii. Annex XIV – Stewarding Guidelines of the FEI Manual for Jumping Stewards, Paragraph 3, which states that it is advised that two Stewards be present for an examination in competition;
- iv. Annex XVI – Steward's Protocol for Handling Cases of Blood on a Horse's Flank and/or Marks Indicating Excessive Use of the Spur and/or Whip, Article 1047.3, which details the protocol to be followed in case, among others, the Steward notices blood on the Horse;

4.4.9 The APR considers that, while the Chief Steward claimed to have seen blood on the Horse's hind legs, none of the abovementioned procedures were followed, which resulted in the Foreign Judge reporting the APR for horse abuse, but without proper evidence.

- 4.4.10 There is no evidence, on file, that the boots showed by the Chief Steward were actually the boots that were used by the Horse during the warm-up.
- 4.4.11 The photos and videos taken one day after the incident cannot be relied upon as evidence, as they do not respect the deadlines provided for under Art. 161.16 and Art. 161.3 of the GRs. The PR was further not informed of it, and no veterinarian performed the examination. For this latest point, the APR alleges that the FEI's Notification Letter dated 28 May 2021 wrongly states that the Horse was examined by the FEI Veterinarian. The Horse was only checked by the Chief Steward.
- 4.4.12 The abovementioned rules were adopted to ensure that any horse inspection or examination is done fairly and independently by the right professionals, which was not properly done in the present case.
- 4.4.13 The APR further listed what he considers to be contradicting, inconsistent, speculative and wrong statements, providing examples of such inconsistencies. In the APR's opinion, those errors show that the statements made by the FEI Officials lack credibility, are very speculative and have material inconsistencies which cast doubt on their accuracy and reliability. Accordingly, the APR is of the view that those statements should be discredited.
- 4.4.14 The APR provided his position as to the FEI Vet Expert Report, submitted as enclosure to the FEI's Claim Brief. In summary, the APR contested the FEI Vet Expert Report for the following reasons:
- i. The wording used is the same one as in the FEI Claim and Notification Letter.
 - ii. The FEI Vet Expert Report relies much on the various reports, despite the lack of evidence.
 - iii. The FEI Vet Expert Report did not mention the violations of procedures in terms of horse examination and fundamental articles of the Veterinary Rules regarding the limb sensitivity and examination.
 - iv. The FEI Vet Expert Report bases its opinion on the fact that the boots belonged to the Horse, without having proper evidence corroborating this allegation.
 - v. The FEI Vet Expert Report, however, indicates that the marks and wounds were not new and fresh, which would support the fact that the

- Horse was not wearing the alleged boots the day of the incident.
- vi. The FEI Vet Expert Report is contradictory, as it concludes that the use of boots with pins caused pain and/or unnecessary discomfort “without any doubt”, caused by the PR, and that it is obvious that the hind limbs sensitivity was caused by the pins in the boots, while in some parts of the Report, the wording “could” was preferred, showing uncertainty.

4.4.15 The APR concludes his submission by summarising the main points of his arguments, which are thus the following:

- i. The APR was not the trainer, the APR or a member of the Support Personnel of the Rider during the Event, nor did he take any relevant decision about the Horse.
- ii. The reporting of the alleged Horse Abuse was not done in accordance with Art. 161 of the GRs. There were numerous procedural deficiencies and irregularities, making the FEI Claim inadmissible.
- iii. The APR challenged and refuted all allegations, and the FEI failed to provide any evidence that connects the APR to the alleged boots. The evidence is circumstantial.
- iv. The FEI Officials have not complied with the GRs, the Manual for Jumping Stewards and the Veterinary Regulations.
- v. The FEI failed to prove that the boots that were handed over by an anonymous person were actually the boots that were placed on the hind legs of the Horse.
- vi. There is inconsistency between the Officials at the Event, which described the boots as having nails, and the FEI and the FEI Expert Report, which alleged that the boots had pins, which are different in terms of effect, harm and size of the marks that would be caused.
- vii. The FEI Vet Expert Report was influenced by the FEI’s arguments and Notification Letter, and went beyond its scope by using legal references.
- viii. The standard of proof to be used should be the criminal one of “Beyond Reasonable Doubt”, since the FEI brought its claim consisting among others of serious allegations of criminal acts under Swiss law.
- ix. Under Art. 169 of the Swiss Civil Procedural Code, the Officials are deemed to be parties when giving evidence. Thus, the Officials’ statements in the present case carry relatively little weight, as they would only be subject to administrative fine in case of false statements.
- x. The FEI bears the burden of proof, and the APR should benefit from the

presumption of innocence.

4.4.16 In terms of sanctions, the APR referred to various FEI Tribunal precedents, where the FEI's claim for Horse Abuse was either dismissed, or reversed, reduced and considered disproportionate.

4.4.17 In the present matter, the request from the FEI should not even be looked at and should be completely dismissed due to the lack of legal standing and other factors mentioned in the APR's submission.

4.4.18 The APR considers that, by his submission, the FEI Tribunal is sufficiently informed of the facts of the case, without the need for an oral hearing to take place, which would be unnecessary expensive for all parties.

4.4.19 In view of all of the above, the APR respectfully requests the FEI Tribunal to:

- i. Dismiss the FEI's claim in their entirety for the reasons set out in the APR's submission;
- ii. Order the FEI to compensate the APR for the damages and losses suffered as a result of the FEI's conduct, currently estimated to an amount of CHF 5,000;
- iii. Order the FEI to pay all costs of proceedings, including the APR's legal representatives' costs and expenses; and
- iv. Order any further and/or additional relief as the Tribunal may deem appropriate.

5. Submissions by the FEI

5.1 The FEI submitted its Claim Brief against both the PR and the APR on 28 June 2021. While the FEI submitted its Claim Briefs separately, the Tribunal will summarize both Claim Briefs in the present chapter, as they relate to the same factual background. Where differences exist between the Claim Briefs, the Tribunal will indicate whether said Claim Brief refers to the PR or the APR.

5.2 As previously stated, the Tribunal will summarise only the most relevant evidence required for this decision.

- 5.3 On 25 February 2021, FEI Officials reported to the FEI HQ that the Respondents used hind boots with pins on the Horse during the Event.
- 5.4 The documents provided to the FEI were the following: Incident Report by the Foreign Judge, Incident Report by the Chief Steward, Foreign Judge Report, Chief Steward Report, Steward Report and the President of the Ground Jury Report.
- 5.5 All the various FEI Officials identified without any doubt the involved people as being the Respondents. The PR and the APR have been seen often together at several events, both during national and international competitions. Both Respondents compete with the Horse. The FEI is satisfied that the identity of the PR and of the APR has been confirmed beyond any doubts.
- 5.6 The Steward submitted, in support of his report, a diagram of the exact positioning, to give a better idea of the scene.

"On 25 February 2021 I was the steward on duty in the warm-up arena for class No 8. I was positioned facing the main arena, with the entrance to the warm-up on my left. [...] I noticed a horse stood in the small holding area, I recognized him as HH Sigma (105XP18), I also saw that there were 4 people around him. This is quite unusual for that area and the reason the 'scene' initially caught my attention. The people I observed with the horse were:

1) Hicham Gharib – 10033790

2) Esam Zbibi – 10184793

3) Lilac Kojak – 10148092

4) Hicham Gharib's Syrian Groom.

I observed the groom take a pair of hind boots out of a bag and proceed to put one on the horses right hind leg. The way he did it was very cautiously with his body angled away from the horse! He placed the boot high on the cannon bone, fairly loosely by what I could see, then quickly pushed it down to the horse's fetlock. The reaction from the horse was immediate and excessive. It held the leg in the air and shook it several times before placing it on the floor and immediately lifting it again and shook it several times. At this point I radioed through to the chief Steward Mr. Ali Mohajer and asked him to come to the warm-up arena. While I was on the radio, I observed the groom putting the second boot on the left hind leg in exactly the same way, the horses' reaction was just as immediate and severe. As I got off the radio Esam Zbibi mounted the horse and brought it into the warm-up arena, he immediately proceeded to jump warm-up fences under the

guidance of his trainer Hicham Gharib, the hind leg action of the horse was extremely exaggerated. I asked one of my steward colleges to take over as Mr. Mohajer had come to the warm-up to discuss what I had seen. While we were talking about the situation, both Mr. Mohajer and I watched Hicham Gharib take the boots off the horse and run to the side of the warm-up arena with them. He proceeded to throw the boots into the brush/shrub area and then went back to the warm-up fences. At this point Mr. Mohajer walked over to the brush/shrub area where the boots were thrown and retrieved them. We both saw that there was a nail/sharp object in the boots and that there was blood around the area. It was at this point, that I returned to my position near the warm-up fences and Mr. Mohajer went to the judges' box.

This is my true recollection of the situation as it happened. If you would like further clarification, please do not hesitate to contact me"

5.7 The Chief Steward submitted the following in his initial report.

"During the warming up prior to the competition, Lynn Al Redha (the steward on duty in at the WU) called me on radio and mentioned the horse of Esam Zbibi shows extreme reaction with his hind leg over the jump. I was on the side of the WU arena and started to walk to her but then I saw the trainer of the rider (Hicham Gharib) stopped the horse, removed the hind boots and threw them outside of the arena. I immediately went to the point and took the hind boots and checked them and figured out there are one nails inside of each of them (check the attached photos). I called the rider, looked at the horses leg and saw a small spot with blood on them. At this point for me it was very clear and obvious what happened. I informed him about the situation, then called the PGJ. PGJ and the FJ came to the warm up. I explained them the case and after checking the boots and photos and listening to the rider and trainer explanations, they decided to disqualify the rider from the class and rest of the event and I issued a YWC for the rider. You can find All the photos, video of the horses leg and his reaction and a copy of the yellow card as attachment."

5.8 In his additional report, the Chief Steward added the following, with supporting evidence (i.e. photographs and videos).

"I was on the warm up area when a Steward called me on the radio. There was an issue with a horse jumping very high with the hind legs. I did not see the horse jump again. By the time I was walking toward the rider, I saw the trainer threw away the boots to the side of the arena and ran to collect another pair of hind boots. I collected the boots that

were thrown away and actually stung my finger on the boot, since the pin was so sharp/strong. I still have the boot in my possession in case it would be needed for this case. I checked the horse's legs and there was blood on one of the hind legs where the boot was normally placed. Later on while the other Steward filming with the presence of the groom, I check the hind legs again and it can easily be seen that the horse is still sore and the photos shows the white cream applied on the place of tiny wounds. The rider of the horse did at the very first moment when I confronted him with the boots with the pin, initially not deny that it was his boots and even let me take the pictures of them beside his horse head number. To clarify the situation PGJ called both the rider and trainer to come to the judge tower, and let them explain. They came together. The rider said he did not know and that someone put it on his horse. The trainer also said he did not know. I am very sure of the identity of both the rider and the trainer, since I see them on the shows every week. The trainer is also a rider and was riding at the same event as the rider where the incident happened. They ride and train together, and the week after the incident, the horse in question competed with the trainer at a national show. I think this is a very serious abuse of the horse that must stop and therefore reported the incident to the FEI."

- 5.9 The Foreign Judge submitted the following. The Foreign Judge's report was accompanied by supporting evidence consisting of three photographs.

"On 25 February 2021 during class No 8, CSI 3, Special Two Phases – the chief steward Ali MOHAJER reported the following: Approx. time of the accident 13:40. The CS was informed by the steward at the warming up Lynn AL REDHA that horse **HH SIGMA, FEI ID 105XP18** of rider **ZBIBI, Esam (GBR), FEI ID 10184793** makes not normal jumps and bringing the hind legs two high. She asked the CS to check the horse. At this moment the CS was at the end of the warming up and when he approached the horse the trainer **GHRAYB, Hisham (SYR) FEI ID 10033790** of the athlete removed the hind boots and throw them outside the warming up arena. The CS found both hind boots and took them. At every boot there was a nail and around the sharp part of the nail inside the boots there was a blood.*

The case was brought to the attention of the PGJ and the FJ. The rider and the trainer were invited to provide their explanation. The rider said that he do not know who put these boots on his horse. The trainer said that he throw boots but they were not the boots which the CS showed him.

The decisions are:

- *CS issue yellow warning card to the athlete **ZBIBI, Esam (GBR), FEI ID 10184793***

for horse abuse. The yellow warning card was given to the athlete and he signed it.

- *President of GJ disqualify the above mentioned athlete and his horse **HH SIGMA, FEI ID 105XP18** (this was the only horse of the rider at the event) until the end of the event.*
- *The FJ to report the trainer **GHRAYB, Hisham (SYR) FEI ID 10033790** to FEI for horse abuse.*

We asked the Treating VET to check the horse. No problems were reported.”

5.10 The President of the Ground Jury, which examined the situation on site, submitted the following,

“On 25 February 2021 during class No 8, CSI 3, the CS Ali Mohajer (10050920) reported the following:*

*The CS was informed by the steward at the warming up Lynn AL REDHA that horse **HH SIGMA, FEI ID 105XP18** of rider **ZBIBI, Esam (GBR), FEI ID 10184793** showing extreme reaction with his hind leg. She asked the CS to check the horse. At this moment the CS was at the side of the warming up and when he approached the horse, the trainer **GHRAYB, Hisham (SYR) FEI ID 10033790** of the athlete removed the hind boots and throw them outside the warming up arena. The CS found both hind boots and took them. At every boot there was a nail and around the sharp part of the nail inside the boots there was a blood. The case was brought to the attention of the GJ and the FJ. The rider and the trainer were invited to provide their explanation. After talking to the CS, seeing all the strong and clear evidences and listening to the rider and trainer, the decision was:*

- *CS issue yellow warning card to the athlete **ZBIBI, Esam (GBR), FEI ID 10184793** for horse abuse. The yellow warning card was given to the athlete and he signed it.*
- *The GJ disqualify the above mentioned athlete and his horse **HH SIGMA, FEI ID 105XP18** (this was the only horse of the rider at the event) until the end of the event.*
- *The FJ and CS to report the trainer **GHRAYB, Hisham (SYR) FEI ID 10033790** to FEI for horse abuse.*

As I know all the photos and videos and other related documents has been attached to the CS reports and sent to the FEI.”

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

- 5.11.1 Abuse of Horse, pursuant to Art. 142 in general, and Art. 142 (vii) and (ix) in particular, of the GRs in connection with Art. 164.12 let. b GRs.
 - 5.11.2 Acts defined as criminal by Swiss law, in breach of Art. 164.12 let. c GRs.
 - 5.11.3 Breach of the FEI Code of Conduct for the Welfare of the Horse, as they engaged in an abusive training method that caused fear.
- 5.12 With respect to the sanctions, the FEI considers that the following factors be taken into account when assessing the sanction to be imposed on the Respondent:
- 5.12.1 The hind boots were constructed and designed in advance showing intention and pre-planned abuse, i.e. being intentional and deliberate.
 - 5.12.2 The main intention of placing pins in the boots was to cause pain and unnecessary discomfort to the Horse in order for it to lift the hind legs abnormally in an attempt to avoid the pain; i.e. to use equipment which causes excessive pain to the Horse upon knocking down an obstacle.
 - 5.12.3 The marks / wounds on the Horse's legs and the Horse's reaction to the boots / palpation indicate that the boots with pins had been used on the Horse already in the past.
 - 5.12.4 The sole purpose of using the boots with pins is to win advantages in competition.
 - 5.12.5 The reaction of the persons involved around the Horse in the context of the incident, i.e. trying to hide the violation and deny the allegations.
 - 5.12.6 The use of the abusive boots with pins forced the Horse to over-jump with its hind legs in an attempt to avoid the pain, which shall be considered as an abusive training method in breach of the FEI Code of Conduct for the Welfare of the Horse.
 - 5.12.7 Furthermore, the Respondents' behaviour amounted to a Criminal Act under Swiss law.

5.12.8 All in all, the FEI is of the opinion that the Horse Abuse offense should fall within the “Top End Range” of sanctions as per Art. 164.14 GRs, warranting a minimum suspension of 2.5 years and a minimum fine of CHF 7'500.

6. FEI Submissions on the Rule Violations

- 6.1 For the reasons set out in Section IV.5 above, the FEI submitted that the Respondents committed an Abuse of Horse towards the Horse pursuant to Article 142 (vii) and (ix), and Art. 164.12 (b) of the GRs. The APR further also violated Article 164.12 (a) of the GRs by assisting, encouraging, aiding and covering up a rule violation of abuse of horse, engaging therefore in Incorrect Behaviour.
- 6.2 First of all, the mere fact that the Respondents used boots with pins with sharp endings on the Horse, i.e. the boots were placed on the Horse, would already constitute an Abuse of Horse.
- 6.3 The FEI submitted two expert testimonies of Dr Göran Akerström, FEI Veterinary Director and Dr Gonçalo Paixão, FEI Veterinary Manager (the “FEI Experts”).
- 6.4 According to the FEI Experts, the boots with pins “evidently” caused pain and discomfort to the Horse. The sharp endings caused excessive pain, and eventually also inflammation and punctured skin.
- 6.5 The use of the boots with pins is furthermore a breach of the FEI Code of Conduct of the Welfare of the Horse, as it is clearly constructed and designed to cause pain and even injury to the Horse, leading to a training method abusive and which causes fear.
- 6.6 The lack of blood in the wounds indicate that the mark wounds are likely dated several days or more. There are furthermore signs of contraction and epithelialisation, which would show the signs of an ongoing healing process. This is further evidenced by the photographs showing grey hair around the wound, indicating that the wounds would not be new and fresh.
- 6.7 It is highly likely that the pins have caused the wounds on the Horse’s hind legs, and that these boots have been used repetitively, considering also the type of wound, the pin with sharp endings and especially the location of the pin inside the boot

and the matching location of the wound on the lower part of the Horse's cannon bone.

- 6.8 The FEI Experts are of the opinion that the Horse's reaction on palpation close to the wounds indicate that the boots have been already used in the past on the very same horse. This is evidenced by the Horse's abnormal sensitivity on the hind legs and on both hind limbs. It is obvious, in the FEI Expert's view, that the sensitivity is caused by the pins in the boots. On the video, the Horse already experienced discomfort by the mere attempt of being touched on the right hind limb.
- 6.9 The act of using boots with pins with very sharp endings caused pain and/or unnecessary discomfort to the Horse, both physically and mentally, according to the FEI Experts. From a veterinary perspective, there is no doubt that the Respondents acted to cause pain and unnecessary discomfort to the Horse, those actions being clearly constitutive of Horse Abuse.
- 6.10 With respect to the Horse Abuse violations, the FEI further asserts that the hind boots were designed and constructed in advance, showing intention and pre-planned abuse. The Respondents' intention was to cause pain to the Horse, so that it would lift the hind legs abnormally in an attempt to avoid the pain, forcing it to over-jump with its hind legs. The Respondents' aim was to enhance the Horse's performance, gaining accordingly an undue advantage in the competition.
- 6.11 All in all, the FEI is of the opinion that the Respondents breached Art. 142 of the GRs by (i) causing pain and unnecessary discomfort to the Horse, (ii) using equipment that causes excessive pain to the Horse upon knocking down an obstacle by using boots with pins with sharp endings on the Horse and (iii) rendering the Horse abnormally sensitive and indirectly hypersensitive.
- 6.12 The FEI further considers that the Respondents' actions amount to criminal acts under Swiss law, in particular Art. 3 and 26 of the Swiss Animal Welfare Act ("AniWa") in connection with Art. 16 of the Swiss Animal Protection Ordinance. In application of Art. 26 AniWa, any person who wilfully mistreats, neglects, or unnecessarily overworks an animal or abuses its dignity in any other way shall be condemned to a custodial sentence not exceeding three years or a monetary penalty. Mistreatment, neglect, or unnecessary overexertion of animals is specifically prohibited by Art. 16 of the Swiss Animal Protection Ordinance. Similarly, Art. 21 of

the Swiss Animal Protection Ordinance prohibits the use in sport of equids with severe or desensitised limb nerves, with skin on the limbs rendered hypersensitive or with pain-inducing agents applied to the limbs. Thus, it is the FEI's view that the Respondents should also be sanctioned in application of the above-mentioned articles, to be applied *in casu* by way of Art. 164.12 (c) GRs.

6.13 According to the FEI Code of Conduct for the Welfare of the Horse, "*all those involved in international equestrian sport [shall] adhere to the FEI Code of Conduct and acknowledge and accept that at all times the welfare of the Horse must be paramount*". The Code further provides that training methods which are abusive or cause fear shall not be used against horses, and that "*foot care and shoeing must be of a high standard. Tack must be designed and fitted to avoid the risk of pain or injury*". The Respondents' conduct amounted to a training method which was abusive and caused fear to the Horse.

6.14 Incorrect Behaviour, as defined by the GRs, is materialised by any form of unsportsmanlike or improper conduct towards officials or any other party connected with the Event. Examples of Incorrect Behaviour included, but are not limited to, among others, assisting, encouraging, aiding, abetting, conspiring, covering up a rule violation (or attempted rule violation) by another person (art. 164.12 (a) of the GRs).

6.15 The APR committed an Incorrect Behaviour by assisting and aiding the PR with the Horse at the Event, as he was around the Horse when the groom put on the abusive boots, showing awareness of the actions. Most importantly, when the APR was confronted by an Official, he took off the boots from the Horse and ran over to the side to throw them away in an attempt to cover up the horse abuse violation.

6.16 The FEI respectfully requests the Tribunal issue the following decision:

1. *Finds that the Respondents have breached Art. 142 and Art. 164.12 (b), Art. 164.12 (c) and Art. 164.12 (i) of the FEI General Regulations;*

2. *As a consequence of such breach, impose on the Respondents:*

a. *at a minimum two and a half (2.5) years suspension each starting from the date of the FEI Tribunal's final decision (the provisional suspension served by the Respondents shall be credited against the imposed suspension); and*

- b. *a fine of at a minimum seven thousand five hundred Swiss Francs (7,500 CHF); and*
- c. *order the Respondents to pay a contribution towards the costs of these proceedings in the amount of two thousand Swiss Francs each (2,000 CHF).*

7. Jurisdiction

Ratione materiae

- 7.1 The Tribunal has jurisdiction *ratione materiae* over this matter pursuant to Art. 38.1 of the Statutes, Art. 18.1 and 30 of the IRs and Art. 163.1 of the GRs. The jurisdiction of the Tribunal remains undisputed.

Ratione temporis

- 7.2 The alleged offences committed by the Respondents took place in 2021, at a time when the applicable regulations were in place, as specified in Section III of the present decision. Therefore, those regulations apply to the present matter.

Ratione personae

- 7.3 The PR is validly registered with the FEI, with reference FEI 10184793. It is undisputed that he is an international professional athlete, who has been involved in equestrian sports as a professional for several years, competing at FEI events for the past three years. Thus, the Respondent is a Member of the GBR-NF, and as such, a Member of the FEI, bound by its Rules and Regulations.
- 7.4 The Tribunal's jurisdiction in relation to the APR is disputed by the latter, as indicated above. The Tribunal however concurs with the FEI that the APR should be considered as an "Additional Person Responsible", within the meaning of Art. 118 par. 3 of the GRs. Art. 118 par. 3 of the GRS defines as Additional Persons Responsible "*the Owner and other Support Personnel including but not limited to grooms and veterinarians [...] if they are present at the Event or have made a relevant Decision about the Horse*".
- 7.5 It is undisputed that the APR was present at the Event. It can be inferred from the FEI Database, and is admitted by the APR himself. The Tribunal is of the opinion that

not only the APR was present at the Event, but he also made a relevant Decision about the Horse. The fact of throwing away the boots (which is not contested *per se* by the APR) shows clear signs of a decision-making process in relation to the Horse. Furthermore, the APR is an experienced rider – which he claims himself as well –, who ought to know that, should he take such decision, he would then be considered as an Additional Person Responsible within the meaning of Art. 118 par. 3 of the GRs.

7.6 Therefore, the APR's arguments by means of which he did not act as the Trainer of the Horse are rejected, as they miss the point. The Tribunal considers the explanations provided by the APR (“[as the PR's groom] was not around, he asked me to remove the Horse hind boots”) as to the reasons behind the removal of the boots not convincing and close to bad faith.

7.7 In view of the above, the Tribunal finds that both the PR and the APR are subject to its jurisdiction in the present matter.

8. The Respondents

8.1 The Respondent (PR) is Esam ZBIBI (FEI ID: 10184793), a British jumping rider who has been involved in equestrian sport for many years and has competed at FEI level for the past three years.

8.2 The Respondent (APR) is Hicham GHARIB (FEI ID: 10033790), a Syrian jumping rider who has been involved in equestrian sport for many years and has competed at FEI level for the past eight years.

9. The Decision

Procedural matters

9.1 Before entering into the merits of the case, the Tribunal has to determine whether, as alleged by the APR, due process was followed in the instances leading to the case to be submitted to the Tribunal. In particular, the APR is of the opinion that the case is tainted with procedural deficiencies throughout the process. This would be evidenced by the fact that the PR was the only Respondent to receive a Yellow

Warning Card. Furthermore, the APR would never have been informed of any violation or action to be taken against him. This is even more surprising considering that the APR was allowed to compete at the Event.

- 9.2 The APR also alleged that a second procedural deficiency would have taken place, in the submission of the Report by the Foreign Judge. In this respect, in the APR's view, the procedure did not follow the procedural requirements for Protests, provided for in art. 161 ff of the GRs.
- 9.3 It can also be inferred from the PR's position that he considers having been the subject of procedural deficiencies. In particular, the PR alleged to have received a yellow warning card and informed of his elimination, which he accepted and respected. But the PR alleges not to have been informed of any other action to be taken against him, until 3 March 2021, upon receipt of the Notification Letter from the FEI. Similarly, the Foreign Judge Report and the President of Ground Jury Report mentioned that only the APR would be reported for Horse Abuse, and not the PR, indicating that they considered a yellow warning card (and disqualification) to be a sufficient sanction.
- 9.4 In relation to the APR's first allegation, the Tribunal needs to determine whether the issuing of a Yellow Warning Card is a prerequisite to the submission of a case to the Tribunal for Horse Abuse, or whether this is only optional. In the present matter, the Tribunal notes that, pursuant to art. 151.9 of the GRs, *"The Foreign Judge is required to send a report to the FEI at the conclusion of the Event"*. The report must include all Reports and Protests received by the Ground Jury as well as all Decisions awarded and sanctions imposed by the Ground Jury on these and other relevant matters (art. 166.3 of the GRs). In the present matter, the Tribunal notes that the Report made by the Foreign Judge (Exhibit 4 to the FEI's Claim Brief) was made within its powers. The Foreign Judge reported to the FEI the incident, which was reported to him by the Chief Steward, and indicated which conclusions were taken, i.e. among others, that the APR was reported to the FEI for Horse Abuse. In addition, the Tribunal notes that there is no document or evidence on file indicating that the APR was deemed not to be responsible by the FEI Officials present on site. To the contrary, the Foreign Judge Report dated 25 February 2021 is very clear as to the conclusions taken and cannot be criticized accordingly.

- 9.5 As to the APR's second allegation, the Tribunal is of the view that art. 161 of the GRs was duly applied in the case at hand. In particular, and contrary to the APR's opinion, the Tribunal does not consider that the deadlines of art. 161.3 of the GRS are applicable in cases of protests to be filed for Horse Abuse. This can be inferred from the fact that Horse Abuse is not mentioned in the table listing the different timings for listing a protest. To the contrary, the protest was duly filed by the Steward Report, which was later completed by Reports from the Chief Steward and the Foreign Judge. As to the competence of the various FEI Officials who submitted their reports, the Tribunal notes that it was duly legitimate for them to report it, pursuant to art. 161.4 of the GRs and, even more so, under art. 161.5 of the GRs. Finally, the Tribunal also wishes to emphasize that, pursuant to art. 38.1 iii of the FEI Statutes, *"notwithstanding anything to the contrary in this Article, the FEI Tribunal may review and decide upon any matter involving abuse of horses"*, providing an additional – though not necessary – basis for the Tribunal to address the present matter.
- 9.6 With respect to the PR's submission, the Tribunal notes that, pursuant to art. 164.3 (c) of the GRs, *"a Yellow Warning Card may be issued in addition to any other Sanction(s) that may be issued in accordance with these GRs and/or the relevant Sport Rules"*. This article allows therefore for additional sanction to be taken against a PR, where needed. In particular, in situations of allegations of Horse Abuse, as is the case here, this article allows for the FEI judicial bodies to go beyond the issuing of a Yellow Warning Card on site. Thus, the PR's argument by means of which he was already sanctioned is dismissed, and the Tribunal can enter into the merits of the case following the submission of the case file by the FEI on 28 June 2021.

Reprehensible behaviour – Horse Abuse

- 9.7 Having clarified that no procedural deficiencies tainted the present matter, the Tribunal must now answer the following question: did the Respondents adopt a reprehensible behaviour with respect to the allegations of Horse Abuse?

Possible breach of Art. 142 GRs

- 9.8 In accordance with Art. 142 GRs, *"no person may abuse a Horse during an Event or at any other time. "Abuse" means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to:*
(vii) To abnormally sensitise or desensitise any part of a Horse;

[...]

(ix) To use any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle."

- 9.9 In this respect, the Tribunal first wishes to emphasize that the list of Art. 142 GRs is not exhaustive, as it can be understood from the terms "*including, but not limited to*" used in the first sentence of the article. Thus, a behaviour not included in the list, but which would constitute, in the Tribunal's view, a clear case of Horse abuse, could also be considered within the meaning of the present article.
- 9.10 After having carefully analysed the various positions remitted by the Parties, the Tribunal is of the opinion, for the motives invoked hereinafter, that the PR and the APR did adopt a reprehensible behaviour with respect to the Horse, and committed Horse Abuse accordingly.
- 9.11 The Tribunal is satisfied that the Respondents committed an Abuse of Horse within the meaning of Art. 142, let. vii and ix of the GRs. The Horse was indeed abnormally sensitised by the Respondents' actions, since its reaction to palpation close to the wounds indicated that the boots had been used in the past on the very same Horse. The Respondents further used device or equipment (i.e. the hind boots containing pins), fulfilling the conditions of the two provisions. But the Respondents' reprehensible behaviour in abusing the Horse went even beyond these two provisions. "*Abuse*", within the meaning of Art. 142 as stated above, is to be understood as any *action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse*. An unnecessary discomfort is already a case of Horse Abuse. But in the present case, the Tribunal is of the opinion that the Respondents' actions went beyond the *unnecessary* discomfort: they extend to an *excessive* discomfort. The Horse was clearly hurt and wounded by the Respondents' actions, as can be seen and evidenced by the photographs of the Horse's hind legs. Based on the FEI Experts' reports, it can further be assessed that the reprehensible behaviour from the Respondents dated already before the Event, as the wounds indicated both new and old injury suffered by the Horse, from a repetitive use of the boots. To summarise, the Tribunal is of the opinion that the Respondents' actions not only caused *unnecessary* discomfort to the Horse, which constitutes in and of itself a breach of Art. 142 GRs, but also went beyond, causing the Horse *excessive* discomfort, rendering the Respondents' actions even more reprehensible.

- 9.12 The Tribunal noted the various reports submitted by the FEI Officials in the present matter. First of all, the Steward, who witnessed directly the incident and reported it to the Chief Steward as was her duty, provided a very comprehensive and detailed report of the incident. The Tribunal is convinced that the Steward Report (cf. *supra*, par. 5.6), is accurate and reflects the incidents that happened at the Event. The Tribunal has no doubts that the groom proceeded to put the pair of hind boots on the Horse's hind legs as described by the Steward ("*he did it very cautiously with his body angled away from the Horse! He placed the boot high on the cannon bone, fairly loosely by what I could see, then quickly pushed it down to the horse's fetlock*"), which is very detailed and coherent. In addition, as an FEI Official, her Report must be duly weighted when it comes to the examination of evidence, as she would obviously have no reason to relate facts that did not occur.
- 9.13 On the other hand, the Tribunal is not convinced that the PR had no knowledge that such boots would be put on his Horse, and that he had never seen the boots before. The fact that his usual groom got injured shortly before the Event is of no relevance and of no help for his defence. If we were to follow the PR's arguments, this would mean that the groom decided, by himself and for no specific reason, to use hind boots with nails or sharp objects, with a Horse he just was working with. This is highly unplausible and unlikely. Furthermore, the PR admitted that, while the Horse was indeed stabled at some distance, the groom did put the hind boots when he arrived to the warm-up arena, where the PR was waiting for him. There is therefore no possibility that the PR could not see the groom put the hind boots to the Horse – which he does not allege – and therefore see the Horse's reaction when such boots were put. The APR's behaviour, which will be addressed below, further comes in support of the Steward's summary of events and diminishes the PR's credibility when it comes to his explanations.
- 9.14 The Tribunal is also convinced, based on the case material, that the APR removed the Horse's hind boots, and threw them away in an attempt to hide the reprehensible behaviour committed by the Respondents. The Steward's reported that she saw the APR "*take the boots off the horse and run to the side of the warm-up arena with them. He proceeded to throw the boots into the brush/shrub area and then went back to the warm-up fences*". Both Respondents admit that the APR removed the boots from the Horse. The PR's explanations as to the removal of the boots were that he noticed the Horse was not "jumping perfectly", and he thus wanted to put another pair of boots. As he could not find his groom, he asked the APR, who

was waiting for his horse, to come and help him remove the boots. The APR would then have just removed the boots and put them outside of the warm-up arena. It can be inferred from the Respondents' respective positions that they deny that the APR ran away and threw the boots into the brush / shrub area. The explanations provided are however not convincing for the Tribunal. The Steward's summary of events, to the contrary, shows a clear path of events, which is rationale and coherent. The fact of removing hind boots which were causing harm to the Horse while the Chief Steward was approaching, shows that the PR and the APR were perfectly conscious of adopting a reprehensible behaviour, which they tried to hide.

- 9.15 The Steward's Report, which is further elaborated by the Chief Steward's Report and the Foreign Judge Report, is also supported by pictures, of both the Horse and the boots, which are clear and leave no doubts. The APR and PR's explanations are irrelevant, especially in terms of the procedure which would not have been followed pursuant to the FEI Manual for Jumping Stewards & Veterinary Regulations. What cannot be contested is that the Horse was examined, and showed that the hind legs were sore, and that various wounds were present on the Horse's hind legs.
- 9.16 The various FEI Officials' reports are further confirmed and supported by the FEI Veterinarian Experts Reports. In this respect, Dr Göran Akerström and Dr Gonçalo Paixão confirmed that the boots with pins caused pain and discomfort to the Horse. The FEI Experts further indicated that the wounds indicate both new and old injury, and repetitive use of the boots. The Horse was abnormally sensitised in its reaction to palpation, which indicates that the boots have been used in the past. Such abnormal sensitivity can be caused by a wound that would not be completely healed or any other trauma to the same area.
- 9.17 The abovementioned behaviour constitutes horse abuse within the meaning of the FEI Rules and Regulations. In this respect, the Tribunal is comfortably satisfied that the FEI has met its burden of proof, as required under Article 32.2 of the IRs, that the Respondents committed a horse abuse within the meaning of Article 142.1 of the GRs.

Reprehensible behaviour – Incorrect Behaviour

- 9.18 The infringement of Incorrect Behaviour, pursuant to Art. 164.12 let. a of the GRs, has been submitted by the FEI only with respect to the APR. The incorrect behaviour

committed by the APR would have consisted, in accordance with the FEI, in assisting, encouraging, aiding and covering up a rule violation of abuse of horse.

9.19 In the present matter, the Tribunal concurs with the FEI findings. There is no doubt that the APR's behaviour was reprehensible, and thus incorrect within the meaning of the aforementioned provision. In particular, the Tribunal considers that the APR took an active part in throwing away the hind boots, in an attempt to cover up and hide the horse abuse violation committed by the PR.

Possible breach of Art. 164.12 (a) GRs

9.20 The Offence of Incorrect Behaviour under Art. 164.12 (a) of the GRs is defined in the Appendix section of the GRs, and encompasses, among others, the behaviour *of assisting, encouraging, aiding, abetting, conspiring, covering up a rule violation (or attempted rule violation) by another person.*

9.21 The Tribunal is of the view that the APR committed an Incorrect Behaviour within the meaning of Art. 164.12 (a) of the GRs. There is no doubt that the APR assisted and encouraged the horse abuse rule violation committed by the PR. The APR further also tried to cover up said rule violation.

9.22 In particular, the APR was already present when the groom put on the hind boots to the Horse. While there is no evidence on the file that, at that time, the APR took an active part in the setting up of the sharp hind boots, the Tribunal infers from this that the APR was present, for the entire duration of the Horse Abuse committed, and was therefore assisting the PR in said rule violation. The APR further assisted the PR in committing the rule violation by removing the boots of the Horse, and later on throwing them away after being confronted by an FEI Official. In this respect, the fact that the APR swiftly removed the boots, and then ran away in an attempt to throw the boots away, shows the degree of his participation in the relevant scheme. Would the APR not have been aware of the PR's Horse Abuse infringement, it is obvious, in the Tribunal's view, that he would never had adopted such a suspicious behaviour. The APR's participation in the PR's Horse Abuse violation leaves therefore no doubt to the Tribunal.

9.23 The APR's attempt to throw away the boots constitutes a separate and clear breach of Art. 164.12 let. a of the GRs (*covering up a rule violation by another person*), since

his action of hiding the boots was made in a clear attempt to cover up the Horse Abuse violation committed by the PR.

- 9.24 In view of the above, the Tribunal considers that the APR committed two specific violations of Art. 164.12 let. a of the GRs. First, the APR assisted and conspired with the PR in committing the Horse Abuse violation, though to a lesser degree than the PR, as it was not his Horse which was the target of the violation, and the APR was not to gain any advantage – at least to the Tribunal’s knowledge – in committing the present Horse Abuse. Second, the APR tried to cover up the Horse Abuse violation committed by the PR, by running away with the hind boots and throwing them away.

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

- 9.25 The Tribunal noted the various arguments made by the FEI in their claim brief, in relation to possible breaches, committed by the Respondents to Swiss criminal provisions. However, the Tribunal is a disciplinary body, and as such does not have jurisdiction to assess the behaviour of the Respondents from a criminal law perspective, whether under Swiss law or UAE law. This competence should remain the prerogative of the respective criminal authorities. The Tribunal looked at the Respondents’ actions only from a disciplinary perspective, imposing, where applicable disciplinary – and not criminal – sanctions.

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

- 9.26 According to Art. 1 let. b of the FEI Code of Conduct for the Welfare of the Horse, with respect to Training methods, *Horses must only undergo training that matches their physical capabilities and level of maturity for their respective disciplines. They must not be subjected to methods which are abusive or cause fear.* Art. 2, let. c further provides that *Foot care and showing must be of a high standard. Tack must be designed and fitted to avoid the risk of pain or injury.*
- 9.27 *In casu*, the Training method used by the Respondents the Horse was undertaken in clear violation of the aforementioned provisions of the FEI Code of Conduct for the Welfare of the Horse. The Horse’s reaction to palpation, and even to attempts to palpation, show without any possible doubt that the method used by the Respondents was abusive and caused fear.

- 9.28 However, while the same incident gave rise to different articles being breached, the Tribunal needs to assess if it was the same action, which led to concurrent breaches, or whether the reprehensible actions from the Respondents constituted separate breaches of the FEI Rules and Regulations.
- 9.29 The Tribunal is of the opinion that the Respondents' actions amounted to concurrent breaches of the FEI Rules and Regulations. While the Respondents' actions are indeed also reprehensible under the FEI Code of Conduct on the Welfare of the Horse, the Tribunal is of the view that the Respondents' misbehaviour is already reflected within the provision of Horse Abuse pursuant to Art. 142 of the GRs. The breaches of the FEI Code of Conduct on the Welfare of the Horse committed by the Respondents do not add up to and/or differ significantly from the main infringement of Horse Abuse. Therefore, and as the breached can be considered to be concurrent breaches, the infringements committed by the Respondents to the FEI Code of Conduct on the Welfare of the Horse will not be taken into account when considering the sanctions to be imposed on the Respondents.

Sanctions on the PR

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

- 9.33 Furthermore, the PR's actions were intentional, deliberate, and pre-meditated. The PR used the hind boots with nails in order to gain an undue advantage in competition and had thus planned his actions ahead. The PR did not make a decision in the heat of the moment, but was prepared for his actions, which must be considered as an aggravating circumstance.
- 9.34 Furthermore, the PR showed no signs of remorse. To the contrary, the PR tried to hide the infringement – with the concurrence of the APR, as will be discussed further below – and later denied, in particular during the proceedings in front of the FEI and the Tribunal, any involvement or knowledge.
- 9.35 The Tribunal further considers the PR's actions to be particularly serious as they may incur long-term consequences for the Horse, as can be seen from its reactions to palpation and the old and recent wounds on the hind legs.
- 9.36 As mitigating factors, the Tribunal notes that, to its knowledge, the PR has never been sanctioned for disciplinary offences in the context of his equestrian experience.
- 9.37 As stated in applicable case law,¹ it is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement. The CAS has evidenced the existence and the importance of the principle of proportionality on several occasions. In the cases *TAS 91/56 (S. v. FEI)* and *TAS 92/63 (G. v. FEI)*, the CAS stated that: *"the seriousness of the penalty [...] depends on the degree of the fault committed by the person responsible"* (Digest of CAS Awards 1986-1998, Staempfli Editions, Berne 1998, 96 and 121).

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

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

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

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

9.38 The FEI concluded that the Tribunal should impose at a minimum two and a half (2,5) years suspension as well as minimum five thousand five hundred Swiss Francs (7,500 CHF) fine, in addition to his contribution towards the costs of the proceedings in the amount of two thousand Swiss Francs (2,000 CHF).

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

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

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

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

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

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

- 9.42 Therefore, based on the principle of proportionality and all of the evidence considered by the Tribunal, the Tribunal is imposing a period of Suspension of four (4) years on the PR for violating Article 142.1 of the GRs.
- 9.43 With respect to the fine, the FEI Guidelines for Fines and Contributions towards Legal Costs provide that “[t]he FEI Tribunal must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining appropriate fines and contributions to legal costs in every case. In addition, regardless of whether the fines and contributions to legal costs are within or outside of the range stated in the Guidelines, the FEI Tribunal must explain the basis for the fines and contributions to legal costs imposed”.
- 9.44 Pursuant to Art. 164.14, the fine to be imposed on the PR would fall between CHF 5'000 to CHF 10'000 in the “top-end” section of the Abuse of Horse offence. In view of the above and taking into consideration all circumstances of the present case, the Tribunal considers that a ten thousand Swiss Francs (CHF 10,000) fine is appropriate to reflect the seriousness of the PR's offence.
- 9.45 Finally, with respect to the costs of the proceedings, since the PR has been considered guilty and sanctioned accordingly, he must be ordered to contribute towards the proceedings' costs. Thus, the Tribunal orders that the PR bears the proceedings' costs in the amount of two thousand Swiss Francs (2,000 CHF).

Sanctions on the APR

- 9.46 In accordance with Art. 164.1 of the GRs, the Sanction will be decided according to the guidelines mentioned in Art. 164.13 of the GRs, taking into account the circumstances of the case.
- 9.47 Art. 164.13 of the GRs provides a non-exhaustive list of relevant factors that should guide the body imposing a Sanction, to categorise the offence in question as “low-end”, “mid-range”, “top-end” or “max”, pursuant to the table listed in Art. 164.14 of the GRs. As is applicable here, the Tribunal considers *inter alia* whether the action or omission resulted in an unfair advantage to the offender or an Athlete (let. a), involved the maltreatment of Horses (let. c), involved fraud, violence or abuse or similar criminal acts (let. e) and was deemed to be deliberate (let. f).

- 9.48 As it has been summarised above, the APR's behaviour amounts to a clear incorrect behaviour, committed in the context of an Abuse of Horse as well as maltreatment of Horses. Abuse of Horse and maltreatment of horses are among the most severe offences that can be committed in the context of equestrian sport.
- 9.49 The APR's actions are however of a lesser gravity than the PR, since he did not gain any unfair advantage for himself. However, the action was meant for the Athlete (here: the PR) to gain an unfair advantage, within the meaning of Art. 164.14 let. a of the GRs mentioned above.
- 9.50 Furthermore, the APR's actions were intentional, deliberate, and pre-meditated. The APR's reaction evidences his knowledge of the PR's actions, which further indicates that the Respondents had conspired and pre-discussed their intentions.
- 9.51 Furthermore, the APR showed no signs of remorse. To the contrary, the APR tried to hide the infringement and later denied, in particular during the proceedings in front of the FEI and the Tribunal, any involvement or knowledge.
- 9.52 The Tribunal further considers the APR's actions to be particularly serious as they may incur long-term consequences for the Horse, as can be seen from its reactions to palpation and the old and recent wounds on the hind legs.
- 9.53 As mitigating factors, the Tribunal notes that, to its knowledge, the APR has never been sanctioned for disciplinary offences in the context of his equestrian experience.
- 9.54 The APR's degree of involvement in the case is however not taken as a mitigating factor by the Tribunal, since it is already reflected in the application of a different sanctioning scale for Incorrect Behaviour in comparison to Horse Abuse. Within the infringement of Incorrect Behaviour, the Tribunal considers in this respect that the two separate and distinct breaches committed by the APR should be taken into account when considering the applicable sanction.
- 9.55 As elaborated above, in par. 9.37, it is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement.

9.56 The FEI concluded that the Tribunal should impose at a minimum two and a half (2,5) years suspension as well as minimum five thousand five hundred Swiss Francs (7,500 CHF) fine, in addition to his contribution towards the costs of the proceedings in the amount of two thousand Swiss Francs (2,000 CHF).

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

9.58 The applicable rule for Incorrect Behaviour carries a suspension of a minimum of two (2) months up to two years. The Tribunal has already described in detail the seriousness of the APR's infringements.

The Tribunal further finds that the APR compromised the Horse's welfare. Horse welfare is paramount in equestrian sport, and to preserve and protect a horse's welfare is one of the FEI's statutory objectives (Article 1.4 of the Statutes).⁴

9.59 The Tribunal is of the opinion that the APR's offence with respect to Incorrect Behaviour falls within the "top-end" category of the table provided at Art. 164.14 of the GRs. Accordingly, a sanction up to 1 year should be imposed on the APR for this offence.

9.60 Therefore, based on the principle of proportionality and all of the evidence considered by the Tribunal, the Tribunal is imposing a period of Suspension of one (1) year on the APR for violating Article 164.12 of the GRs.

9.61 With respect to the fine, the FEI Guidelines for Fines and Contributions towards Legal Costs provide that "[t]he FEI Tribunal must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining appropriate fines and contributions to legal costs in every case. In addition, regardless of whether the fines and contributions to legal costs are within or outside of the range stated in the Guidelines, the FEI Tribunal must explain the basis for the fines and contributions to legal costs imposed".

⁴ Article 1.4: To preserve and protect the welfare of the Horse and the natural environment by establishing appropriate codes of conduct.

- 9.62 Pursuant to Art. 164.14, the fine to be imposed on the APR would fall between CHF 3'000 to CHF 7'000 in the "top-end" section of the Incorrect Behaviour offence. In view of the above and taking into consideration all circumstances of the present case, the Tribunal considers that a five thousand Swiss Francs (CHF 5,000) fine is appropriate to reflect the seriousness of the APR's offence.
- 9.63 Finally, with respect to the costs of the proceedings, since the APR has been considered guilty and sanctioned accordingly, he must be ordered to contribute towards the proceedings' costs. Thus, the Tribunal orders that the APR bears the proceedings' costs in the amount of two thousand Swiss Francs (2,000 CHF).

10. Terms of the Decision

- 10.1 As a result of the foregoing, the Tribunal finds the PR's actions are considered Horse Abuse within the meaning of Art. 142.1 of the GRs, and the APR's actions are considered Incorrect Behaviour within the meaning of Art. 164.12 of the GRs.

With respect to the PR

- 10.2 For the above reasons, and in accordance with Articles 142.1, 159.2, 164.5, 164.7, 164.12 let. b, 164.13 and 164.14 of the GRs, the Tribunal therefore decides as follows:

- 1) Esam Zbibi has engaged in Horse Abuse and thereby violated Article 142 of the GRs.
- 2) Consequently, Esam Zbibi is suspended for a total period of **four (4) years**, starting from the date of this decision. Consequently, the PR is suspended until **1 February 2026**.
- 3) Esam Zbibi is fined **ten thousand Swiss Francs (CHF 10,000)**.
- 4) Esam Zbibi is ordered to pay **two thousand Swiss Francs (CHF 2,000)** towards the cost of these proceedings.

With respect to the APR

- 10.3 For the above reasons, and in accordance with Articles 159.2, 164.5, 164.7, 164.12 let. a, 164.13 and 164.14 of the GRs, the Tribunal therefore decides as follows:

- 1) Hicham Gharib has engaged in Incorrect Behaviour and thereby violated Article 164.12 let. a of the GRs.
- 2) Consequently, Hicham Gharib is suspended for a total period of **one (1) year**, starting from the date of this decision. Consequently, the APR is suspended until **1 February 2023**.
- 3) Hicham Gharib is fined **five thousand Swiss Francs (CHF 5,000)**.
- 4) Hicham Gharib is ordered to pay **two thousand Swiss Francs (CHF 2,000)** towards the cost of these proceedings.

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

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

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

V. DECISION TO BE FORWARDED TO:

- a. Mr Esam ZBIBI (PR) and Mr Hicham GHARIB (APR): Yes
- b. The President of the NF of the persons sanctioned (i.e. Great Britain and Syria): Yes
- c. FEI: Yes
- d. Any other: No

FOR THE PANEL



Mr Jose A. Rodriguez Alvarez, Tribunal panel chair