

DECISION of the FEI TRIBUNAL

dated 28 June 2023

in the matter of

Mr. Nerijus ŠIPAILA (PR; Ref. C23-0016)

Ms. Vilte Kasiulyte (PR; Ref. C23-0016)

(FEI Case number: FEI 2022/BS10 – BLANCH and 2022/BS11– CINDY NSO)

I. Composition of the FEI Tribunal Hearing Panel:

Mr Cesar Torrente (COL), one-member panel

II. Applicable Statutes and Regulations:

- Statutes 24<sup>th</sup> edition, effective 19 November 2019 (“**Statutes**”), Arts. 1.5, 38 and 39.
- General Regulations, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 143.1, 159, 164, 165 and 167 (“**GRs**”).
- Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 (“**IRs**”).
- FEI’s Equine Anti-Doping and Controlled Medication Rules, 3<sup>rd</sup> edition, changes effective 1 January 2022 (“**EADCM Rules**”). The EADCM Rules are divided into the Equine Anti-Doping Rules (the “**EAD Rules**”) and the Equine Controlled Medication Rules (the “**ECM Rules**”).

III. General details of the case:

FEI Tribunal Reference: C23-0016

Person Responsible/ID/NF: Nerijus ŠIPAILA /10044738/LTU

Horse/Passport: BLANCH/107VD44/LTU

Event/ID: CSYH1\*- Kunkiai (LTU), 25-28.08.2022, 2022\_CI\_0576\_S\_YH\_01

Date of sample collection: 26.08.2022

Prohibited Substance(s): Morphine, Oripavine

Bar Code Nos.: 5609615

Person Responsible/ID/NF: Vilte KASIULYTE/10129107/LTU

Horse/Passport: CINDY NSO/107XY33/LTU

Event/ID: CSYH1\*- Vazgaikiemis (LTU), 01-04.09.22, 2022\_CI\_0097\_S\_YH\_01

Date of sample collection: 03.09.2022

Prohibited Substance(s): Morphine, Oripavine

Bar Code Nos.: 5609599

IV. Factual background

1. Mr. Nerijus ŠIPAILA (FEI ID: 10044738), the Person Responsible (“the PR 1”), is a Lithuanian Jumping rider who competed with the horse BLANCH (“the Horse 1”) at the CSYH1\* in Kunkiai (LTU) between 25 and 28 August 2022 (“the Event 1”).
2. Ms. Vilte KASIULYTE (FEI ID: 10129107), the Person Responsible (“the PR 2”), is a Lithuanian Jumping rider, who competed with the horse CINDY NSO (“the Horse 2”) at the CSYH1\* in Vazgaikiemis (LTU), between 1<sup>st</sup> and 4 September 2022 (“the Event 2”).
3. The Fédération Equestre Internationale (“the FEI” together with the PRs, “the Parties”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, and, Para-Equestrian).

4. Horse 1 was selected for testing on 26 August 2022 and returned a positive result for morphine and oripavine, which are Prohibited Substances under the FEI's Equine Prohibited Substance List.
5. Horse 2 was selected for testing on 3 September 2022 and returned a positive result for morphine and oripavine, which are Prohibited Substances under the FEI's Equine Prohibited Substance List.
6. Morphine is an opioid with analgesic effect and is classified as a Controlled Medication Substance. Similarly, oripavine is an opioid with analgesic effect however it is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Morphine may result from the metabolism of oripavine.
7. Oripavine and morphine are both designated as "Specified Substances", which means that they may enter a Horse's system inadvertently, due to a credible non-doping explanation.
8. The positive finding of morphine and oripavine in the Horse's sample gave rise to Anti-Doping and Controlled Medication Rule Violations ("**the EADCMRs Rule Violations**").

V. **Procedural background**

9. By way of two Notification Letters dated 22 December 2022, the FEI informed the PR 1 and the PR 2 of a violation of Article 2.1 (*The Presence of a Banned and Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*) and Article 2.2 (*The Use of a Banned and Controlled Medication Substance and/or Banned/Controlled Medication Method*) of the EADCMRs based on the Laboratory's finding of morphine and oripavine in the Horse 1's Sample collected at the Event 1 and in the Horse 2's Sample collected at the Event 2.
10. The PR 1 and PR 2 were not provisionally suspended, as the Rule Violations involved Specified Substances, in accordance with art. 7.4.2 of the EAD Rules.
11. Both Horses were provisionally suspended for 2 months as of the date of the Notification Letters.
12. By email dated 21 April 2023, the FEI submitted its request to the Tribunal for the appointment of a Panel for the adjudication and approval of a Settlement Agreement. The Lithuanian Equestrian Association (The "**LTU-NF**"), the NF of both PRs', was copied to the FEI's correspondence. The FEI further requested the

consolidation of the proceedings opened by the FEI under reference 2022/BS10 (2022/ATF13) in relation to PR 1, and 2022/BS11 (2022/ATF14) in relation to PR 2, due to related commonalities as reasoned in the Settlement Agreement. Accordingly, only one Settlement Agreement was submitted by the FEI, which incorporated both cases.

13. On 5 May 2023, the Tribunal Chair informed the Parties of the appointment of a one-person hearing panel to adjudicate and approve this case. The Parties were asked to provide any objections to the constitution of the hearing panel. The Tribunal Chair further informed the parties of his decision to consolidate the cases brought against the PR 1 and the PR 2, in application of Art. 23.1 let. c of the IRs, in view of the contemporaneous factual background upon which they are based.
14. On 5 May 2023, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
15. Neither the PR 1 nor the PR 2 objected to the constitution of the Panel.
16. Neither party requested an oral hearing.

## VI. The Parties' Submissions:

### A. Submissions by the PRs

17. The PRs submitted that the Horses were stabled at a private stable owned by the PR 1, access to which was restricted to authorised personnel only.
18. Horse 1 and Horse 2 are both owned by the PR 1. They reside in the same stable, which is also owned by the PR 1, and were fed with the same hay, oats and muesli before and during the Events.
19. The PR 2 indicated that Morphine is not available for sale in Lithuania, and is therefore never used to treat horses. The first assumption was thus that the source of the substances is through the hay.
20. The Horses have been fed with hay, haylage, oats and muesli. No prohibited Substances were administered to the Horses in question in the year prior to the Events. The Horses received no veterinary treatment in the year prior to the Events. As morphine and oripavine are Naturally Occurring Prohibited Substances ("NOPS"), the PRS suspected from the onset that a contamination of the feed must have

occurred causing the positive findings in their Horses.

21. In the context of the FEI proceedings, the PRs further collaborated and consulted fully with the FEI, in order to investigate the source of the Prohibited Substances. In this respect, an FEI Official Veterinarian went to the PR 1's stable on 7 February 2023 for sampling of the hay, muesli and oats, for the purpose of a laboratory analysis. Furthermore, the PRs sent a sample of the oats from the Summer of 2022 (which would have been fed to the Horses) to an FEI approved laboratory, upon recommendation from the FEI, in order to pursue additional analysis of the presence of alkaloids.

#### **B. Submissions by the FEI**

22. On 21 April 2023, the FEI provided the Tribunal with the Settlement Agreement reached between the Parties, which contains accordingly the FEI's position.
23. The FEI submitted that summarised the interrelation and characteristics of morphine and oripavine. In this sense, the FEI explained that the combination of both, in general, is strongly indicative of a potential ingestion of opium poppy, i.e. *Papaver Somniferum*, which contains more than 40 different alkaloids, including morphine, codeine, thebaine, papaverine and noscapine. If *Papaver Somniferum* is ingested by a horse, it is scientifically probable that the Horse's sample will return a positive finding for oripavine and morphine.
24. On 7 February 2023, and upon request from the PRs, the National Head FEI Veterinarian for Lithuania, who is also an FEI Official Veterinarian, visited the PR 1's stable to collect a sample of the hay, muesli and oats, for the purpose of a laboratory analysis. By way of a duly signed Witness Statement of the same day, the FEI Official Veterinarian attested that the oats contained many impurities of vegetable origin, and that there were a lot of different plant seeds, some of them being possibly poppy seeds.
25. An additional sample was submitted to an FEI approved laboratory from oats of the Summer 2022 (which would have been fed to the Horses), to analyse the presence of alkaloids.
26. On 22 February 2023, the Laboratory provided the Certificate of Analysis stating that no morphine, oripavine and thebaine were found in the analysed sample of oats. Notwithstanding the above, the Laboratory provided other relevant observations alongside with the photographs of the oats sample prior to and after grinding. The Laboratory confirmed the presence of what appear to be poppy seeds

heads in the sample before and after grinding. Whilst they did not detect any morphine or codeine in the sample, the laboratory observed peaks that may be related to codeine at a later retention time. The spectra matches correctly for the alkaloids boldine and boldine methyl ester. Furthermore, a potential related peak for reticuline was observed in the sample. Reticuline is a known precursor to morphine. Complete confirmation was not possible, as the Laboratory does not have reference material for these alkaloids.

27. Upon request from the FEI, Dr. Stuart Paine, Associate Professor of Veterinary Pharmacology, Faculty of Medicine & Health Sciences, University of Nottingham, stated that morphine and oripavine degrade over time. He attested that there are studies showing that in order to reduce morphine in poppy seeds – grinding and washing of the seeds helps to degrade morphine. In addition, morphine and/or oripavine degrades with time during storage. Finally, Dr Paine concluded that *if reticuline's and/or boldine's presence can be confirmed in reasonable quantities then it is scientifically plausible that the Adverse Analytical Finding of morphine and oripavine in the horses' samples results from the contaminated feed (oats).*
28. The FEI noted that the Laboratory observed peaks potentially related to boldine, boldine methyl ester and reticuline in the oats sample. The Laboratory did not have reference materials for the specific alkaloids, therefore their quantification is not possible. However, it is the FEI's opinion that quantification is not needed in order to achieve the required burden of proof in this specific case taking into account the totality of circumstances.
29. When conducting the sample collection at the PR 1's stable, the FEI Official Veterinarian furthermore attested that hay and muesli are kept separately from the oats and that no signs of feed contamination were observed. In relation to the muesli, the FEI noted that the Horses were fed with the feed from an established European manufacturer of equine feed with worldwide customers. Upon request from the PRs in the context of the investigation, the manufacturer stated that they conduct regular testing of their feeds for Naturally Occurring Prohibited Substances ("NOPS"), including morphine, thebaine and codeine. The manufacturer submitted to the PRs the negative analyses results from an FEI approved laboratory, involving four of their feeds. Those feeds consist of the same ingredients (although a different mix) as the feed that was fed to the Horses.
30. Furthermore, it is the FEI's experience that if a contamination had occurred at the manufacturer of such a widely used feed, there would have been more positive cases detected by the FEI and other regulatory bodies involving the same and related Prohibited Substances. The FEI did not detect any such peaks of positive

doping cases.

31. All in all, the FEI is satisfied that, in the totality of circumstances of the cases, the PRs established, on a balance of probabilities, that morphine and oripavine entered the Horses' systems through oats contaminated with the poppy flowers of the Papaver species.
32. The above finding is made by taking into account:
- (i) the interrelation and characteristic of morphine and oripavine;
  - (ii) the contaminants i.e. the poppy flower capsules found in the oats;
  - (iii) the relevant observations made by the Laboratory that analysed the oats sample, in particular the related peaks consistent with reticuline, a precursor of morphine, and boldine and boldine methyl ester; and
  - (iv) the Dr Paine's opinion.
33. Furthermore, the FEI is of the opinion that the PRs bear No Fault or Negligence for the Rule Violation, in accordance with Art. 10.5 of the EADCMRs.

## VII. Legal Analysis

### A. Jurisdiction

34. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ECM Rules and Article 18 of the IRs. The PRs are members of the LTU-NF, which is a member of the FEI; therefore, the PRs are bound by the EADCMRs. Article 10.8.2 of the EADCMRs provides for agreements to be reached between parties, subject to approval by the Tribunal. As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

### B. Agreement between the Parties

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

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

In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR 1's Horse BLANCH at the CSYH1\*in Kunkiai (LTU) on 26 August 2022 and from the PR 2's Horse CINDY NSO at the CSYH1\*in Vazgaikiemis (LTU) on 3 September 2022, the PRs and the FEI agree in accordance with 10.8.2 EADCMRs on the following:

- (a) The PRs admit the violations of Article 2.1 of the EADCMRs (*The presence of a Banned and a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*);
- (b) The PRs established on a balance of probabilities how morphine and oripavine entered the Horses' systems;
- (c) The PRs bear *No Fault or Negligence* for the Rule Violations in accordance with Art. 10.5 of the EADCMRs and the applicable period of Ineligibility is eliminated;
- (d) In accordance with Articles 9.1, 10.1.2 and 11 of the EADCMRs the results achieved by the PRs and the Horses at the Events are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (e) The PRs shall not incur any fines; and
- (f) The PRs accept and do not challenge the two (2) months period of provisional suspension that was imposed on the Horses as of the date of the Notification Letter; and
- (g) No other Sanctions (other than the Disqualification of the Horses' results at the Events) will apply in these cases; and
- (h) Each party will bear its own legal and other costs incurred in connection with these proceedings.

This agreement is made in accordance with Article 10.8.2 of the EADCMRs and is subject to the approval of the FEI Tribunal.

The parties acknowledge and agree that, pursuant to Article 13.3 of the EADCMRs, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

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



## VIII. Approval of Agreement

36. Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI accepts – on a balance of probabilities – that the PR 1 and the PR 2 established (i) how the Banned and the Controlled Medication Substances entered the Horse's system and (ii) that they bear No Fault or Negligence for this anti-doping rule violation.
37. The Tribunal acknowledges that the PRs and the FEI have agreed on terms for the closure of proceedings in accordance with Art. 10.8.2 of the EADCMRs.
38. Furthermore, the Tribunal also takes note that the FEI is satisfied that the present finding took into consideration the totality of the evidence and written submissions produced in the context of the present proceedings.
39. The Tribunal wishes to emphasise that it did neither evaluate whether the PR 1 and the PR 2 have met their burden of proof regarding the source of the Prohibited Substances, nor their degree of Fault or Negligence for this anti-doping rule violation. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the decision in this case depends on the particular circumstances as disclosed above.
40. To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EADCMRs.
41. Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case C23-0016 SIPAILA & KASIULYTE (2022/BS10 BLANCH and 2022/BS11 CINDY NSO).

## IX. Terms of the Decision

42. The Panel decides that:
  - 1) The Agreement reached between the FEI and the PR 1, Mr Nerijus SIPAILA and, the PR 2, Ms Vilde KASIULYTE, concerning the cases 2022/BS10 BLANCH and 2022/BS11 CINDY NSO (C23-0016 SIPAILA & KASIULYTE) is hereby ratified by

the Tribunal with the consent of the Parties, and its terms set out in Section VII B above are incorporated into this Decision.

- 2) This Decision shall be notified to the PR 1, to the PR 2, to the Secretary General of the LTU-NF, and to the FEI.
- 3) This Decision shall be published in accordance with Article 13.3 of the EADCMRs.

**X. Legal Action**

43. This Decision may be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification, as set out in Article 13 of the EAD Rules and Article 12 of the ECM Rules.

FOR THE TRIBUNAL

A handwritten signature in blue ink, appearing to read 'Torrente', is centered below the text 'FOR THE TRIBUNAL'. The signature is stylized and cursive.

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Mr Cesar Torrente, One-Member Panel