



## **DECISION of the FEI TRIBUNAL**

**dated 19 February 2009**

**Positive Medication Case No.:** 2008/45

**Horse:** AMUR

**FEI Passport No:** UKR40108

**Person Responsible:** Mr Sergij Chernyh

**Event:** CH-M-YHorses-CCI2\* Le Lion d'Angers, FRA

**Prohibited Substance:** Phenylbutazone, Oxyphenbutazone

### **1. COMPOSITION OF PANEL**

Mr. Erik Elstad  
Mr. Patrick A. Boelens  
Mr. Alberto Hernán Méndez Cañas

### **2. SUMMARY OF THE FACTS**

**2.1 Memorandum of case:** By Legal Department.

**2.2 Summary information provided by Person Responsible (PR):**

The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR, as well as testimonies and submissions presented in the course of the proceedings.

**2.3 Oral hearing:** None: by correspondence.

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

**3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 22<sup>rd</sup> edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**GR**").

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1<sup>st</sup> edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 10<sup>th</sup> edition, effective 1<sup>st</sup> June 2006, Art. 1013 and seq. and Annex III (the Equine Prohibited List).

FEI Code of Conduct for the Welfare of the Horse.

### **3.2 Person Responsible:** Mr Sergij Chernyh

### **3.3 Justification for sanction:**

GR Art. 146.1: "The use of any substance or method that has the potential to harm the horse or to enhance its performance is forbidden. The precise rules concerning Prohibited Substances and Medication Control are laid down in the EADMCRs."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

## **4. DECISION**

### **4.1 Factual Background**

1. AMUR (the "**Horse**") participated at the World Breeding Championship for Young Horses WBFSH in Le Lion d'Angers, France, from 16 to 19 October 2008 (the "**Event**"), in the discipline of Eventing. The Horse was ridden by Mr Sergij Chernyh who is the Person Responsible in accordance with GR Art. 142 (the "**PR**").
2. The Horse was selected for sampling on 17 October 2008.
3. Analysis of the urine sample no. FEI-68584 taken from the Horse performed by the approved central laboratory of the FEI, the Laboratoire des Courses Hippiques ("**LCH**"), in France, under the supervision of Yves Bonnaire, Director of the Laboratory, revealed the presence of Phenylbutazone and Oxyphenbutazone (Certificate of Analysis dated 7 November 2008).
4. The Prohibited Substances detected are Phenylbutazone and Oxyphenbutazone which are NSAIDs (non-steroidal anti-inflammatory drugs) with analgesic and anti-inflammatory effects and, accordingly, are classified as a "Prohibited Substance" under the Equine Prohibited List (VR Annex III, the "Equine Prohibited List"), in



the class "Medication A". Oxyphenbutazone is considered as a metabolite of Phenylbutazone when found in the same sample. This is also the reason for leaving the test result in the Medication A category.

5. No request had been made for the use of Phenylbutazone or Oxyphenbutazone on the Horse, and no medication form had been supplied for these substances.

#### **4.2 The proceedings**

6. The presence of the Prohibited Substances, the possible rule violation and the consequences involved were duly notified to the PR on 11 December 2008.
7. The notification of 11 December 2008 included a notice that the PR was provisionally suspended and granted the opportunity to be heard at a preliminary hearing before the FEI Tribunal.
8. The PR did not request a preliminary hearing.
9. On 16 December 2008 the Ukrainian NF submitted a statement in the form of an e-mail on behalf of the PR. According to this statement, the Horse, during its transport from the Ukraine to France, had been kicked in the hind leg by a horse placed next to it on the horse truck. Since the Horse's hind leg had swollen after this incident, on 12 October 2008, the PR had administered, intravenously, an injection of 10 ml Fenildjekt (equivalent of 2 mg Phenylbutazone). In the course of the dressage test at the Event, the Chief d'Equipe of the Ukrainian team realized that the Horse had problems with his hind leg and had immediately applied with the Organizing Committee to withdraw the Horse from further participation in the competition.
10. According to the e-mail the PR further alleges that the Chief d'Equipe of the Ukrainian team had not been notified about the doping test and that there were no professional veterinary doctors in the Ukrainian team who knew that it was necessary to notify the official veterinary of the competition or how to fill out the special Medication Form needed.
11. The PR has also given a written explanation dated 23 December 2008 where he states that he had to administer the Feniljekt to the Horse himself since there was no professional veterinary doctor in the Ukrainian team. He further states having acted to make his horse feel better and passed the Horse inspection. He then participated in the Dressage test, but during this the Chief d'Equipe noticed that there was something wrong with the Horse's hind leg. He withdrew from further competition with the Horse.

12. Together with the notification of 11 December 2008, the PR also received notice that the B-Sample analysis would, upon request by the PR, be carried out at the LCH. The PR was informed of his right to attend or be represented at the identification and opening of the B-Sample.
13. The PR did not request a B-Sample analysis.
14. According to GR Art. 173.4, the present decision is effective from the day of written notification to the persons and bodies concerned.
15. The Tribunal accepted the statements and evidence filed in this case. The Tribunal considered that the parties worked diligently and in an expedited manner to gather and provide evidence.

#### **4.3 Jurisdiction**

16. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCRs.

#### **4.4 The Person Responsible**

17. The PR is the person responsible for the Horse, in accordance with GR Art. 142, as he was the rider of the Horse at the Event. He also admitted that he was the one who had administered the Prohibited Substances.

#### **4.5 The Decision**

18. The Tribunal is satisfied that the laboratory report relating to the A-sample reflect that the analytical tests were performed in an acceptable method and that the findings of LCH are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Phenylbutazone and Oxyphenbutazone which are Prohibited substances.
19. The FEI has thus sufficiently proven the objective elements of an offence in accordance with EADMCR Article 3. The Prohibited Substances is a "Medication A" class substance.
20. In doping and medication cases there is a strict liability as described in EADMCR Article 2.1.1. When a positive case has been proven by the FEI, the PR has the burden of proof to show that he bears No Fault or No Negligence for the positive findings, EADMCR Article 10.5.1, or No Significant Fault or No Significant Negligence, EADMCR Article 10.5.2.
21. The PR has admitted that he administered by injection the Prohibited Substance, Phenylbutazone, to the Horse. He did not apply for permission by filling out the Medication Form. His only



explanation is that he did this for the welfare of the Horse.

22. The FEI Tribunal finds that in this case the PR acted deliberately with the intention to enhance the performance of the Horse so that he could compete even though the horse had been injured.
23. According to EADMCR Article 9 disqualification from the event is automatic when there is a positive finding.
24. In deciding the sanctions, the FEI Tribunal considered, on the one hand the medication violation and types of substances involved, as well as the fact that the PR acted deliberately to cover up the fact that the horse had been injured and needed treatment for this. The Horse passed the Horse inspection without anyone noticing the injury, but at the Dressage test the Horse did not perform well and they had to withdraw from further competition. The Prohibited Substance was administered to the Horse by injection and without any kind of consultation with the Chef d'Equip or official veterinarians in the Event. It is the responsibility of all riders who compete in International competitions to know the applicable rules about doping and medication.
25. On the other hand and in mitigation, the FEI Tribunal takes into consideration the level of the Event, the PR's amateur "status" and the fact that the Ukraine team did not have a veterinarian whom he could have consulted before he treated the Horse to improve the wellbeing of the Horse.
26. The Tribunal is astonished to learn that the Horse passed the Veterinary Inspection although it seemed obvious that there was something wrong with the hind leg of the Horse. It is even more surprising that the Ukrainian Chef d'Equipe saw that something was wrong with the Horse and withdrew it from the Competition. The Tribunal is seriously concerned about the accuracy of Veterinary Inspections at Major Events such as a World Championship for Young Eventing Horses.
27. The Tribunal is furthermore concerned about the fact that some competitors at International Events show an obvious lack of knowledge of the FEI Rules and Regulations and more specifically of the Doping and Medication Rules showing a need for the NF's to inform and educate their Riders and also Officials before sending them to participate at FEI events.

#### **4.5 Disqualification**

28. As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse and the PR from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with EADMCRs Article 9.

#### 4.6 Sanctions

29. As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with GR Article 174 and EADMCRs Article 10:

- 1) The PR shall be suspended for a period of **six (6) months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension shall be credited against the period of ineligibility imposed in this decision.
- 2) The PR is fined **CHF 750.-**
- 3) The PR shall contribute **CHF 1'000.-** towards the legal costs of the judicial procedure.

#### 5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

5.3 The President of the Organising Committee of the event through his NF: Yes

5.4 Any other: No

FOR THE PANEL



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THE CHAIRMAN Mr Eric Elstad