

DECISION of the FEI TRIBUNAL

dated 23 May 2022

(Reference No. FEI Tribunal: A22-0001)

In the matter of

Federation of Equestrian Sports of Russia (the **Appellant** or the FESR)

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (the **Respondent** or the FEI)

together, the **Parties**

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Ms. Harveen Thauli (CAN), Panel Chair
Mr. Cesar Torrente (COL), Panel Member
Dr. Armand Leone (USA), Panel Member

INTRODUCTION

1. The FESR submitted this Appeal after the FEI Board agreed to an Emergency Board Resolution on 2 March 2022, prohibiting Russian and Belarusian Athletes, Horses and Officials from participating in FEI Events until further notice.

Hearing: A hearing was held on 28 April 2022 at 4:00 pm (Central European Time by video conference)

Present:

FEI Tribunal Hearing Panel (the **Panel**)

Mr. Gautier Aubert, FEI Tribunal Clerk

Counsel for the Appellant:

Mr. Sergey Yurlov

Mr. Maxim Kretov

Counsel for the FEI:

Mr. Mikael Rentsch, FEI Legal Director

Ms. Áine Power, FEI Deputy Legal Director

Applicable Rule Provisions:

Statutes 24th edition, effective 19 November 2019 (the **Statutes**), Art. 20.3, Art. 38.1.

General Regulations 24th edition, updates effective 1 January 2022 (the **GRs**), Art. 162, Art. 165.

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (the **IRs**), Art. 18, Art. 23, Art. 38, Art. 39.

FACTUAL BACKGROUND

2. After Russian military forces invaded Ukraine, the International Olympic Committee's (the **IOC**) Executive Board made an urgent recommendation on 25 February 2022 to all International Sport Federations (**IFs**) that they relocate or cancel their sports events in Russia and Belarus.
3. On 28 February 2022, the IOC's Executive Board further recommended that the IFs not invite or allow Russian and Belarusian athletes and officials to participate in international

competitions to protect the integrity of global sport competitions and for the safety of all the participants (the **IOC Recommendation**).

4. On the same day, and at the request of the FEI Executive Board, the FEI Secretary General removed all FEI Events scheduled to take place in Russia and Belarus in 2022 from the FEI's calendar pursuant to Article 112.3 of the GRs and Article 28.2(vi) of the Statutes. The FESR did not appeal this decision.
5. The FEI Board decided to follow the IOC Recommendation and voted to adopt the following Emergency Board Resolution on 2 March 2022 (the **Resolution**):

The FEI Board condemns the invasion of Ukraine by Russian military forces and the support provided by the government of Belarus.

Further to the recommendation of the IOC Executive Board on 28 February 2022 and the request of the FEI Executive Board and as a protective measure to secure the integrity and safety of FEI Competitions, the FEI Board agrees to the following Emergency Board Resolution in accordance with Article 20.3 of the FEI Statutes:

To prohibit all Russian and Belarussian Athletes, Horses and Officials from participating in FEI Events until further notice. To enable an effective implementation of this Emergency Board Resolution, the prohibition will take effect as of midnight (CET) on Sunday, 6 March 2022. This Emergency Board Resolution also excludes the possibility of Russian and Belarussian Athletes (Equine and Human) and Officials from participating in FEI Events under the FEI flag and/or in a neutral capacity.

In the meantime, the Russian and Belarussian flags cannot be displayed or the Russian and Belarussian anthems cannot be played at (or in connection with) any FEI Events.

6. The FEI Board relied on Article 20.3 of the Statutes to adopt the Resolution. Article 20.3 states:

In an Emergency Situation the Board may, by a two-thirds (2/3) majority of votes cast, pass Resolutions which are normally the prerogatives of the General Assembly. In such cases, the National Federations shall be notified promptly of these measures. If a majority of the National Federations eligible to vote, responding within thirty (30) days of the date of the notice, signifies its disapproval, the measure shall be rescinded if possible."

The Statutes define an Emergency Situation as “*A serious situation or occurrence that happens unexpectedly and clearly requires immediate action.*”

7. On 2 March 2022, the FEI Secretary General informed the FESR of the Resolution and advised that the Resolution would come into effect at midnight on 6 March 2022.

PROCEDURAL BACKGROUND

8. On 5 March 2022, the FESR sent a Notice of Appeal to the FEI Tribunal contesting the Resolution and asking the FEI Tribunal, “*To cancel the FEI Board Emergency resolution regarding prohibition on the participation of Russian Athletes, Horses and Officials in FEI Events as political [sic] discriminatory on a [sic] ethnic grounds and contrary to the legal and ethical norms of the FEI Rules and Regulations.*” The FESR requested expedited proceedings and guaranteed the payment of costs, including the deposit.
9. On 9 March 2022, the FEI Tribunal Chair (the **Chair**) acknowledged receipt of the FESR’s Notice of Appeal and requested proof of payment of the deposit. The Chair noted the FESR’s request for expedited proceedings and asked the FEI for its position on this.
10. On 11 March 2022, the FESR submitted proof of payment of CHF 500. The FEI did not receive this deposit.
11. On 11 March 2022, the FEI advised the Chair that it did not object to expedited proceedings and provided the Chair with a proposed schedule for the submission of documents.
12. On 13 March 2022, the Chair confirmed that the FEI Tribunal would expedite the proceedings pursuant to Article 23.1(e) of the IRs. The Chair informed the Parties of the composition of the FEI hearing panel appointed to hear the Appeal and requested the Parties to submit any objections to this hearing panel by 16 March 2022. The Chair also included a proposed schedule, based on the FEI’s proposed schedule, for the Parties’ approval by the same date.
13. On 14 March 2022, the FESR objected to Martin Gibbs’ appointment as a hearing panel member. The FESR submitted that Mr. Gibbs lacked impartiality because of his role as a Special Advisor to the Centre for Sport and Human Rights (**CSHR**), which had issued a statement on 25 February 2022 condemning the Russian invasion of Ukraine (the **CSHR statement**). The Chair asked Mr. Gibbs to provide his position on the FESR’s objection to his appointment.

14. On 15 March 2022, Mr. Gibbs rejected the FESR's objection because he was not consulted by the CSHR on the CSHR statement and in his role as a Special Advisor, he is not a CSHR staff member nor a member of its executive team or board of directors.
15. On 16 March 2022, the Chair informed the FESR of Mr. Gibbs' position and rejected its objection to Mr. Gibbs' appointment.
16. On 17 March 2022, the FESR submitted its Appeal Brief. The FESR maintained its objection to Mr. Gibbs' appointment to the hearing panel and requested an interim stay of the Resolution pending determination of this Appeal. The FESR also stated it *"reserves the right to request the Tribunal to supplement the Appeal by any additional written explanations after reviewing the FEI's answer."*
17. On 17 March 2022, the Chair acknowledged receipt of the FESR's Appeal Brief, asked the Parties to confirm if they agreed to the proposed schedule for the submission of documents, presented the Parties with two possible dates for the hearing, and noted the FESR's request for an interim stay of the Resolution.
18. On 17 March 2022, the FESR sent another letter to the Chair reiterating its objection to Mr. Gibbs' appointment to the hearing panel. The FESR submitted that Mr. Gibbs appears on the CSHR's website as a Special Advisor, did not disclose the type of advice he provides to the CSHR, did not provide any documents evidencing his relationship with the CSHR, and did not provide any proof that he was not consulted on the CSHR statement. The FESR further submitted that the evidentiary threshold requires only an appearance of the lack of impartiality.
19. On 21 March 2022, the FEI confirmed not having any objection to the hearing panel but indicated it would not object if the Chair replaced Mr. Gibbs to prevent any attack of this decision on procedural grounds. The FEI agreed to the proposed schedule for the submission of documents and indicated its availability for the hearing. The FEI submitted that the FESR's statement about reserving the right to request providing further submissions after reviewing the FEI's Answer should not be permitted because the FEI would have to be given an opportunity to respond to the FESR's further submissions to ensure procedural fairness. The FEI stated that given the hearing was expedited, there was limited time for additional submissions and the Parties would have the opportunity to address written submissions at the hearing. The FEI further submitted that it agreed to an expedited hearing on the understanding that the FESR would not request an interim stay since this was not

included in its Notice of Appeal, and this put a disproportionate burden on the FEI given it had to prepare a Response to the FESR's request for the interim stay and an Answer on this Appeal.

20. On 21 March 2022, the Chair acknowledged receipt of the Parties' submissions on Mr. Gibbs' appointment to the hearing panel. Since the FESR raised similar arguments in all of its objections to Mr. Gibbs' appointment, the Chair held that the FESR's objection had already been properly addressed and the hearing would proceed with the hearing panel he had appointed.
21. During the evening of 21 March 2022, the FESR agreed to the proposed schedule for the submission of documents, confirmed its availability for the hearing, noted the FEI would not object to the Chair replacing Mr. Gibbs on the hearing panel, submitted its right to request an interim stay did not depend on the FEI's *understanding*, and stated the FEI's *complaint* that it had to prepare a Response and an Answer did not *hold water* because it had submitted one document (ie, the Appeal Brief) for both matters.
22. During the evening of 21 March 2022, the FEI submitted its Response to the Appellant's request for an interim stay.
23. On 22 March 2022, the Panel Chair acknowledged receipt of the Parties' submissions on the interim stay, confirmed the hearing would take place on 28 April 2022, and advised that the Parties would not be permitted to supplement their written arguments after submission of their respective Appeal Brief and Answer. The Panel Chair also advised the Parties that a decision on the interim stay would be issued in due course.
24. On 24 March 2022, the FESR submitted a further letter to the Chair objecting to Mr. Gibbs' appointment to the hearing panel. The FESR stated it did not raise similar arguments in its letters of 14 and 17 March 2022, and that its arguments in its 17 March 2022 remained unanswered.
25. On 29 March 2022, the Chair informed the Parties that Mr. Gibbs asked to be removed from the hearing panel despite his assertion the FESR's objection was meritless. The Chair informed the Parties that Dr. Armand Leone would replace Mr. Gibbs and gave them until 1 April 2022 to submit any objections to Dr. Leone's appointment.
26. On 30 March 2022, the FEI indicated having no objection to Dr. Leone's appointment. The FESR did not provide any response.

27. On 4 April 2022, the FEI submitted its Answer to the Appeal Brief.
28. On 4 April 2022, the Panel Chair informed the Parties that the Panel had duly considered and reviewed the Appellant's request for an interim stay of the Resolution, as well as the FEI's Response to such request. The Panel Chair advised the Parties that, after considering their arguments, the Panel was not convinced the FESR had established the Resolution was causing the FESR irreparable harm, which would justify staying its execution pending determination of the Appeal. Therefore, the Panel dismissed the FESR's request for an interim stay.
29. On 5 March 2022, the Panel Chair acknowledged receipt of the FEI's Answer and confirmed that neither Party would be calling any witnesses to be heard at the hearing. The Panel Chair asked the Parties to provide a proposed schedule for the hearing itself.
30. On 11 April 2022, the FESR submitted a proposed schedule, which the FEI agreed to the following day.
31. On 20 April 2022, the FESR provided the Panel Chair with proof of payment of a second deposit of CFH 500.
32. On 23 April 2022, the Tribunal Clerk asked the Parties to indicate who would attend the hearing on their behalf and provided the FEI with the FESR's proof of payment of the second deposit. The FEI received the second deposit.
33. On 24 April 2022, the FEI provided the names of its hearing representatives.
34. On 25 April 2022, the FESR provided a Power of Attorney listing the names of its hearing representatives.
35. On 28 April 2022, the hearing took place by video conference.

THE PARTIES' SUBMISSIONS

36. Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions and documentary evidence submitted during these proceedings as well as the oral arguments given at the hearing held on the 28 April 2022. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in this Appeal,

the Tribunal will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

Submissions by and on behalf of the FESR

37. The FESR submitted the following in its written and oral submissions:

The Resolution

- (i) The Resolution impacted more than 600 Russian Athletes, including 159 Athletes registered to participate in FEI Events in 2022, and 152 Officials.
- (ii) The Resolution is a *de facto* decision, which the Statutes define as an *authoritative decision reached or pronounced after considering the facts and law*. The FESR states, “*The Resolution is in fact the FEI’s decision to ban the whole Russian equestrian sports*”, but the FEI did not consider the facts and law *before* bringing the Resolution into force. Therefore, the FEI violated its own Statutes and the fundamental principle of due process, including a fair trial and the right to be heard.
- (iii) Article 20.3 of the Statutes requires an *Emergency Situation*, which is defined as, “*A serious situation or occurrence that happens unexpectedly and clearly requires immediate action.*” The Statutes do not define or include criteria for determining whether a “serious situation” actually exists. Since Article 20.3 is vague and lacks clarity (predictability) for its application, the Resolution lacks any legal basis.

Military Invasion

- (iv) There is no evidence that the alleged invasion of Ukraine by Russian military forces constitutes an “*emergency basis*”. Furthermore, the case file does not have any evidence that the equestrian sport in Ukraine has been shut down, Ukrainian Athletes face risks to their lives, and Ukrainian Athletes are restricted from practicing the equestrian sport.
- (v) There have been other recent military conflicts, including between the US and Syria, Israel and Yemen, and Turkey and Cyprus. The FEI and other IFs did not impose sanctions on sport, which suggests the IFs were complying with the universally recognized principle of political neutrality.

FEI’s Autonomy

- (vi) The FEI’s regulatory framework is to deal with issues within this framework and not punish IFs for the actions of third parties. The lack of clarity of Article 20.3 gives “*the*

FEI an unfettered discretion vis-à-vis third parties and enable the FEI to abuse its rights."
This does not comply with Swiss law whereby the autonomy of an association under Swiss law is not unlimited.¹

- (vii) In response to the FEI's statements in its Answer that *"the FEI Statutes specifically grant a margin of discretion to the FEI Board to decide what constitutes and what does not constitute a serious situation"*, the FESR states that *"the FEI is trying to stretch its autonomy too far."*

Discrimination

- (viii) The Resolution is aimed at discriminating the FESR, its Athletes and Officials, which is contrary to the principle in Article 2.1 of the Statutes that states, in part, that the FEI is based on the principle of equality and mutual respect between all National Federations (**NFs**), without regard to ethnicity, political opinion or national origin. Discrimination is also contrary to Article 8(2) of the Swiss Federal Constitution.
- (ix) The FEI refers to the concept of *"fairness and integrity of FEI competitions"* but the FEI has suspended the FESR, a fully compliant National Federation, and discriminated against its Athletes and Officials.
- (x) By adopting the Resolution, the FEI is violating the following provisions of the Swiss Civil Code (**SCC**): the personality rights of the FESR and its Athletes must not be infringed (Article 28 of the SCC); every person must act in good faith (Article 2 of the SCC); and the mandatory provisions of law cannot be altered by articles of an association (Article 63(2) of the SCC).

Other IFs and International Condemnation

- (xi) The FEI's argument in its Answer that *"28 other International Sports Federations have prohibited Russian athletes and officials from participating in their respective events"* does not serve as grounds for the Resolution nor does the *"international condemnation"* referred to by the FEI.

Punitive and Disproportionate

- (xii) The Resolution is punitive and imposes sanctions without any legal basis by suspending the FESR's membership with the FEI and enforcing an indefinite period of ineligibility on the FESR's Athletes and Officials. The Statutes define a suspension

¹ CAS 2014/A/3776, *Gibraltar Football Association (GFA) v. Fédération Internationale de Football Association (FIFA)*, award of 27 April 2016.

as a “temporary removal of rights”. The Resolution’s effect is similar to a boycott directed against the whole Russian equestrian sport.

- (xiii) The FEI violated the principles of legality and proportionality because: there was no (alleged) punishable behaviour by the FESR, its Athletes or Officials; there is no connection between any previous (non-existent) behaviour and the imposed sanction; the FEI did not notify the FESR, its Athletes or Officials of any wrongdoing; and less onerous sanctions were not imposed on the FESR, its Athletes or Officials before the Resolution was adopted.
- (xiv) The Resolution has the effect of changing the eligibility requirements for FESR’s Athletes, contrary to Articles 113 and 117 of the GRs. The Athletes whose entries were withdrawn by the FEI following adoption of the Resolution were duly registered with the FEI and had fulfilled all eligibility requirements. These Athletes were *legitimately expecting* to compete in FEI Events.
- (xv) The Resolution has had a financial impact on FESR Athletes and Officials, who have received invoices for “no shows” to FEI Events that they are prevented from attending.

Recent Decision

- (xvi) On 7 April 2022, the Fédération Internationale de Luge’s (FIL) Court of Arbitration quashed the sanctions that FIL imposed on the Russian Luge Federation (the **FIL Decision**).

Costs

- (xvii) The FESR asked for costs but did not specify an amount.

38. The FESR responded to Panel questions at the hearing as follows:

- (i) When asked how the FEI should deal with boycotts by other nations at FEI Events should the FESR Athletes be allowed to compete, the FESR replied that there is no legal basis for the Resolution and the sanctions are disproportionate. The FESR suggested that as a not-for-profit, non-political Swiss association, the FEI is mixing politics and sports and stated the FEI changed the eligibility requirements for its Athletes by suspending them.
- (ii) When asked if the FESR would allow an individual Athlete who was publicly against the war in Ukraine to compete as an individual Athlete, the FESR replied that there

was no legal basis for any sanctions, which also applies to an individual's participation. The FESR also stated, "*There is no evidence that there is a war in Ukraine*" and the FEI did not impose sanctions in other international military conflicts.

39. The FESR requested the following prayers for relief:

- A. *The present appeal is fully admissible;*
- B. *The Emergency Board Resolution adopted by the Fédération Equestre Internationale Board on March 2, 2022 is set aside;*
- C. *The Fédération Equestre Internationale declares publicly (on its official website) that there are no sanctions relating to the Russian Equestrian Sports Federation (including its athletes, officials, etc.) (with immediate effect);*
- D. *The Fédération Equestre Internationale reimburses the Russian Equestrian Sports Federation with all costs incurred with regard to these proceedings.*

Submissions by and on behalf of the FEI

40. The FEI submitted the following in its written and oral submissions:

FEI Autonomy

- (i) The FEI is an association formed in accordance with Article 60 et seq. of the SCC. Under Swiss law, it is widely recognised that sports associations/federations such as the FEI have a high degree of autonomy.
- (ii) The Court of Arbitration for Sport (**CAS**) has recognised this autonomy and stated:
Recognized by the Swiss federal Constitution and anchored in the Swiss law of private associations is the principle of autonomy, which provides an association with a very wide degree of self-sufficiency and independence. The right to regulate and to determine its own affairs is considered essential for an association and is at the heart of the principle of autonomy. One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance, their membership and their own competitions.²

² CAS 2022/0/2422, *United States Olympic Committee (USOC) v. International Olympic Committee (IOC)*, award of 4 October 2011 at para. 55.

- (iii) CAS acknowledges that *"this autonomy is not absolute"* in that the *"statutes must contain the necessary provisions as to the goal, the resources and the organisation of an association."*³
- (iv) Article 1 of the Statutes sets out the FEI objectives. In particular, Articles 1.3 and 1.6 state:
 - 1.3. *To enable individual Athletes and teams from different nations to compete in International Events under fair and even conditions.*
 - 1.6. *To recognise the interests of all the constituencies of equestrianism including but not limited to National Federations, Athletes, Owners, Organisers, Officials and sponsors, and to foster their harmonious collaboration.*

The Resolution Preconditions and Formalities

- (v) The only question the Panel must determine is whether the FEI Board validly exercised its power under Article 20.3 of the Statutes to adopt the Resolution. There are two preconditions to Article 20.3, which are: 1. the FEI Board must be satisfied that an *"Emergency Situation"*, as defined in paragraph 6, exists; and 2. there must be two-thirds (2/3) majority of the votes cast in favour of the Resolution.
- (vi) Once the two preconditions are satisfied, there are two additional formalities required by Article 20.3, which are: 1. that NFs are *"promptly notified"* of the measures passed by way of an Emergency Board Resolution; and 2. that *"if a majority of the National Federations eligible to vote, responding within thirty (30) days of the date of the notice, signifies its disapproval, the measures will be rescinded."*

Emergency Situation and Votes

- (vii) The FEI Board was satisfied that an Emergency Situation existed for the following reasons:
 - a) The circumstances relating to the invasion of Ukraine by Russian military forces have been widely reported and documented. The invasion met (and still meets) the definition of an Emergency Situation because it was (and remains) a *serious situation or occurrence* that happened *unexpectedly* and required *immediate action* even when only viewed in the context of equestrian sport.

³ Ibid, para. 56.

- b) The military action effectively had the effect of shutting down equestrian sport in Ukraine, placing the lives of Ukrainian Athletes, Officials and Horses at risk and severely limiting, if not completely restricting, their ability to compete in FEI Events. By adopting the Resolution, the FEI Board wanted to ensure the fairness and integrity of FEI Events (discussed further below).
 - c) The IOC Executive Board took the unprecedented step of urging IFs to prohibit Russian and Belarusian Athletes and Officials from participating in international events. This call to action reinforced the emergency nature of this situation and could not be ignored by the FEI Board.
- (viii) All voting members, with one exception, voted to approve the Resolution. Only Marina Sechina, the FESR President, voted against the Resolution.
- (ix) As soon as two-thirds (2/3) of the voting members approved the Resolution on 2 March 2022, the FEI issued a notification to 137 NFs informing them of it on the same day.
- (x) The NFs had 30 days, or until 2 April 2022, to signify their disapproval of the Resolution. The FESR disapproved of the Resolution by filing this Appeal. The Belarus National Federation (the **BNF**) did not signal its disapproval by 2 April 2022 but the BNF subsequently wrote to the FEI Secretary General asking her to consider reducing the duration of the measures for BNF Athletes, Horses and Officials.
- (xi) The FEI Board validly exercised its power under Article 20.3 of the Statutes by satisfying the two preconditions and the formalities.

Resolution's Legal Effect

- (xii) The Resolution has the same legal effect as a rule that is approved by the FEI General Assembly. It is the equivalent of the FEI calling an Extraordinary General Assembly where the NFs approve the insertion of a new rule in the FEI Rules and Regulations allowing the FEI to prohibit Russian (and Belarusian) Athletes, Horses and Officials from participating in FEI Events until further notice to secure their integrity and safety.

Level Playing Field, Integrity and Safety of FEI Events

- (xiii) If the FEI Board had not adopted the Resolution, the FEI would have been confronted with a situation whereby Russian Athletes, Horses and Officials would have been free

to participate in FEI Events as normal whereas their Ukrainian counterparts were effectively prevented from competing in the same Events. This would have undermined the principle of a level playing field and equal access, as stated in Article 1.3 of the Statutes, and as a consequence, adversely impacted the integrity of the Events.

- (xiv) Thomas Bach, the IOC President, acknowledged this principle of a level playing field by stating:

The IOC chief agreed neither of the Russian athletes nor their sport organisations are responsible for the invasion of Ukraine, but allowing them to continue participating would mean only Ukrainian athletes would be left out and unable to compete while their country is under attack by Russia.⁴

Therefore, by prohibiting Russian Athletes, Horses and Officials from participating in sports competitions, they are in no better position (in sporting terms) than their Ukrainian counterparts.

- (xv) Article 1.6 of the Statutes provides that one of the FEI objectives is to foster *harmonious collaboration* among all NFs. The FEI submits that there is a concern that FEI Athletes, Officials, teams and NFs would boycott FEI Events rather than participate alongside FESR Athletes, Officials and teams while the war is ongoing. This is concerning given the upcoming FEI World Championships. Boycotts would ultimately undermine the goal of harmonious collaboration and the integrity of FEI Events. In support of its position, the FEI provided the following examples and scenarios:
- a) The depth of feeling in the sports community over Russia's invasion of Ukraine is illustrated by the negative reaction of the National Paralympic Committees (NPCs) to the International Paralympic Committee's (IPC) decision to allow Russian athletes to participate under a neutral flag in the recent Winter Paralympic Games. The NPCs' discontent included threats to boycott the Winter Paralympic Games. Less than one day later, the IPC reversed its initial decision and instead decided to refuse all entries for Russian athletes and officials at the Winter Paralympic Games.
 - b) The Swiss and German swimming teams threatened to boycott the Fédération Internationale de Natation (FINA) 2022 World Swimming Championships if FINA

⁴ <https://www.insidethegames.biz/articles/1120406/bach-justifies-russia-belarus-sanctions>

maintained its original decision to allow Russian athletes and teams to compete under a neutral flag.⁵ When other countries threatened to boycott the Championships, FINA changed its initial decision by banning Russian and Belarusian athletes from competing. This decision was made following “a review of an independent risk assessment.”⁶

- c) Some FEI disciplines, such as Dressage and Vaulting, are based on marks awarded by judges. A possible scenario is that a Ukrainian Athlete would rather withdraw than be subject to scores of a Russian judge.
- d) Allowing Russian Athletes and Officials to participate in FEI Events could result in protests at such Events. Mr. Bach specifically identified this risk in a recent interview. He stated:

Letting Russians and Belarusians continue competing also presents risk “because of anti-Russian and anti-Belarusian feelings following the invasion,” Bach said. “We are facing an insoluble dilemma in this respect because we have at the same time the great responsibility to ensure the integrity, fairness and safety of our competitions.”⁷

Political Platform

- (xvi) The Resolution prevents the possibility that FEI Events are used as a platform by FESR Athletes and Officials to express their support for Russia’s invasion of Ukraine. The FEI provided the following examples:
 - a) At the Apparatus World Cup event in Doha, Qatar on 5 March 2022, the Russian athlete, Ivan Kuliak, covered the Russian flag on his uniform and replaced it with a “Z”, a symbol used to show support for Russia’s invasion of Ukraine. He stood on the podium alongside the Ukrainian athlete, Illia Kovtun.
 - b) President Vladimir Putin hosted a pro-war rally on 18 March 2022 at the Luzhniki Stadium, the venue of the 2018 FIFA World Cup Final. Evgeny Rylov, the Tokyo 2020 Olympic gold medallist attended this rally with other prominent Russian athletes. They were seen wearing the symbol, Z.

⁵ <https://www.insidethegames.biz/articles/1120672/switzerland-fina-world-championships> and <https://www.insidethegames.biz/articles/1120826/german-swimming-federation-joins-boycott>

⁶ <https://www.insidethegames.biz/articles/1120943/fina-russia-belarus>

⁷ <https://www.insidethegames.biz/articles/1120406/bach-justifies-russia-belarus-sanctions>

Proportionate and Protective

- (xvii) The Resolution is proportionate because it goes no further than necessary to ensure that the fairness and integrity of FEI Events are safeguarded.
- (xviii) The FEI submits that when assessing proportionality of the Resolution, it is important to assess the measures the FEI Board did not adopt, which includes the following:
 - a) The FEI Board did not suspend the FESR, its Athletes, Horses and Officials, apart from their right to participate in FEI Events. Their membership rights are not affected by the Resolution.
 - b) Russian Athletes can still vote and put themselves forward as candidates in the FEI Athlete Elections.
 - c) Russian Officials can continue to take FEI courses and ensure they maintain or advance their respective levels as Officials.
 - d) The FESR was invited to attend the FEI Sports Forum and may attend the upcoming FEI General Assembly. The FESR may exercise its membership rights by providing feedback on proposed changes to the FEI Rules, Regulations and Olympic Regulations as well as voting in elections.
 - e) The FESR Athletes, Horses and Officials may still participate in national events held in Russia.
- (xix) The FEI submits that the FESR is not suspended because if it were, the FESR would not be permitted to do any of the actions described in the previous paragraph.
- (xx) The FEI adds that despite the Resolution, the FESR, its Athletes and Officials would nonetheless have difficulty participating in FEI Events because a number of Russian banks have been removed from the SWIFT international payment system, which has a corresponding impact on the ability of Organisers to pay prize money to Russian Athletes, as well as the closure of airspace to Russian airlines.
- (xxi) In response to the FESR's assertion that the Resolution's purpose is "*to punish the FESR along with the Athletes/Officials*", the FEI submits the sole purpose of the Resolution is to protect the integrity and safety of FEI Events. Furthermore, after the Resolution was issued, Ingmar De Vos, the FEI President issued a letter on 3 March

2022 to each FEI registered Russian (and Belarusian) Athletes and Official in which he stated the FEI knew the Athletes and Officials were not responsible for their government's actions and discussed their government's breach of the Olympic Truce. He wrote, in part, the following:

The FEI Board took this decision based on the clear recommendation issued by the Executive Board of the International Olympic Committee on 28 February 2022 following the breach of the Olympic Truce by your respective governments. The Olympic Truce is essential to allow our athletes to compete in a safe environment.

We are living in very difficult times and although we know that you are not personally responsible for the decisions of your governments, the ongoing war has meant that this protective measure is also necessary to secure the integrity and safety of FEI Competitions. It was not an easy decision to take and believe me when I say that it was taken with a heavy heart.

- (xxii) In response to the FESR's statement that the integrity of FEI Events could be secured "in a more proportionate and effective manner than imposing a total ban on the whole Russian equestrian sports", the FEI notes the FESR did not offer any suggestions on what more proportionate and effective could be. The FEI further submits that if the FEI Board wanted to punish the FESR, its Athletes and Officials, it would have suspended the FESR, including its membership rights, its Athletes and Officials. This did not happen.

No Violation of Due Process

- (xxiii) The Resolution did not arise out of disciplinary proceedings or an alleged breach of the FEI Rules and Regulations. In cases of a disciplinary nature/rule breach, the alleged *accused* has the right to defend his version of events before a disciplinary sanction is imposed.
- (xxiv) The Resolution is not a punitive decision but rather a *protective measure*. The cases cited by the FESR on the alleged breach of the right to be heard are all disciplinary in nature and are, therefore, not relevant to this Appeal. The relevance of the right to be heard principle must be assessed in that context.
- (xxv) As Article 20.3 deals with *Emergency Situations* requiring the FEI Board to act *immediately*, Article 20.3 does not enshrine a mandatory right to be heard, which is contrasted with Article 8 of the Statutes. This Article involves the suspension of a NF and states: "The Board may suspend a National Federation that has acted in breach of

the principles in Article 2, provided it is afforded a right to be heard. The Suspension may be immediate and provisional in the event of a material breach."

- (xxvi) Before adopting the Resolution, on 28 February 2022, after advising the FESR of the decision to remove FEI Events from taking place in Russia and Belarus from the FEI calendar, the FEI Secretary General specifically informed the FESR that the FEI Board would be considering the IOC recommendation to prohibit FESR's Athletes and Officials from participating in FEI Events. Therefore, the FESR was on notice of the FEI's proposed course of action.
- (xxvii) The FEI Secretary General took additional steps by telephoning and messaging the FESR Secretary General several times before the Resolution was adopted to keep the FESR informed of the developments, including the FEI Board's discussions and recommendation to the FEI Board so that the FESR was not taken by surprise if the FEI Board proceeded with adopting the Resolution. The FESR did not make any submissions or put forth any arguments to protest the FEI's proposed course of action. Therefore, the FEI submits that any claims about being denied a right to be heard must be viewed by reference to this background.
- (xxviii) The FEI Board is comprised of representatives of all eight FEI Regional Groups, among others, to ensure the FEI Board has a global perspective on all of its decisions. Ms. Sechina, the FESR President, represents FEI Regional Group III, which includes Russia and Belarus. She had the opportunity to vote against the Resolution, which she did. Therefore, the FEI submits it is not accurate to state that the FESR did not have any say in the Resolution.
- (xxix) The FEI stated the FIL Decision has not yet been published and could not comment on its content.

The Horses

- (xxx) The FEI's Solidarity fund has dedicated CHF 1 million to providing emergency shelter and food for Ukrainian horses that have been evacuated from war zones.

Costs

- (xxxi) The FEI asked for costs of CHF 3'000.

41. The FEI responded to Panel questions at the hearing as follows:

- (i) In response to whether this Panel should uphold the Resolution if there is a violation of Swiss law, the FEI responded that under Swiss law, IFs enjoy the principle of autonomy, which provides Swiss associations with a very wide degree of self-sufficiency and independence. This gives IFs a right to regulate and determine its own affairs, including issuing rules relating to its own governance, membership and competitions. This autonomy is not absolute in that the statutes must contain the necessary provisions on the goal, resources and organisation of an association. The FEI submitted the Resolution was necessary to ensure that some of the FEI's key goals are respected, which include the integrity of FEI Events and a fair and level playing field. The FEI rejected the FESR's position that the FEI breached Swiss law and stated many Swiss institutions such as banks have taken measures in response to the war and specifically targeted Russian individuals and banks. The FEI submitted that it cannot be simply stated that these Swiss institutions acted in a discriminatory manner. The FEI summarised by stating that the FEI has broad discretion under the SCC and the system of sports governance that applies in Switzerland and the Resolution was necessary to achieve the FEI's key objectives.

- (ii) In response to whether the indefinite timeframe in the Resolution aligns with the principle of predictability and proportionality, the FEI responded that the Resolution does not have a time limit because it is specifically linked to the ongoing war in Ukraine. It is unknown how long Ukrainian Horses will remain in emergency shelters or Ukrainian Athletes will limit their participation in FEI Events. The FEI highlighted that Mr. De Vos stated the following in his letter of 3 March 2022 to each registered Russian (and Belarusian) Athlete and Official: "*I hope from the bottom of my heart to be able to welcome you back in international competitions very soon [...].*"

42. The FEI requested the following prayers for relief:

- A. *Dismiss the Appeal in its entirety;*

- B. *Order the Appellant to pay a contribution towards the FEI's legal fees and other expenses incurred in connection with these proceedings, in accordance with Article 159.4 of the FEI General Regulations and the FEI Guidelines for Fines and Contributions towards Legal Costs.*

JURISDICTION & ADMISSIBILITY OF THE APPEAL

43. The Tribunal has jurisdiction over this matter pursuant to Article 38.1 of the Statutes, Articles 18.1 and 28.1 of the IRs and Article 162 of the GRs. The jurisdiction of this Panel of the Tribunal is undisputed.
44. The FEI submitted in its Answer that the FESR failed to fulfill the requirement to pay the deposit CHF 500 by 23 March 2022 and raised its non-payment as a preliminary matter in its Answer. At the hearing, the FEI acknowledged receiving the second deposit and was prepared to proceed with the Appeal. The Panel Chair held the Appeal was admissible.

LEGAL DISCUSSION

45. The Panel must determine whether to allow or dismiss this Appeal. This leads to an analysis of whether the FEI Board validly exercised its power under Article 20.3 of the Statutes to adopt the Resolution, which prohibits Russian Athletes, Horses and Officials from participating in FEI Events until further notice.
46. The following criteria under Article 20.3 must be satisfied: 1. an *Emergency Situation*; 2. two-thirds (2/3) majority of the votes cast; 3. prompt notification to the NFs; and 4. rescission of the Resolution if a majority of the eligible NFs signify their disapproval within thirty (30) days.
47. It is evident that criteria 2, 3 and 4 in the previous paragraph were easily met. This is sufficiently discussed in paragraph 40 under the heading, *Emergency Situation and Votes*. All members except for the FESR President voted to approve the Resolution. The FEI issued a notification to 137 NFs on the same day the Resolution was passed. The FESR disapproved of the Resolution by filing this Appeal. The BNF did not signal its disapproval by the deadline but subsequently asked the FEI Secretary General to consider reducing the duration of the measures for its own Athletes, Horses and Officials. Therefore, 135 NFs approved the Resolution by not signaling their full disapproval. The Panel will, therefore, focus on whether there was (and is) an Emergency Situation that warranted the Resolution and address some of the arguments raised by the Parties.
48. An Emergency Situation is "*A serious situation or occurrence that happens unexpectedly and clearly requires immediate action.*" The FESR stated there is no evidence that the alleged invasion of Ukraine by Russian military forces constituted an "*emergency basis*" because there is no evidence that the equestrian sport in Ukraine has been shut down, Ukrainian Athletes face risks to their lives or are restricted from practising the equestrian sport. In contrast, the FEI stated the invasion of Ukraine by Russian military forces met (and still meets) the

definition of an Emergency Situation because it was (and remains) a *serious situation or occurrence* that happened *unexpectedly* and required *immediate action* even when only viewed in the context of equestrian sport.

49. The Russian military invasion of Ukraine has been widely reported on different media platforms. It is difficult to ignore what is happening in real time such as a cluster bomb landing on an apartment building in Mariupol or a school in the Luhansk region. These images are real and enough for this Panel to state that a reasonable person would conclude that Russian military forces invaded Ukraine and the war is ongoing.
50. It is not only the invasion itself that presented a serious and unexpected situation requiring immediate action but also the consequences of that invasion. Some consequences are actual and others potential but they are sufficiently serious to support the FEI Board's immediate action to adopt the Resolution. The Panel agrees that the Resolution supports the principle of a level playing field and is a protective measure to ensure the safety and integrity of FEI Events.
51. In brief, the Resolution satisfies all the necessary criteria (ie, the two preconditions and formalities) under section 20.3 of the Statutes. Despite this, this Panel will elaborate on certain issues raised by the Parties in their submissions and at the hearing.

Level Playing Field

52. As Mr. Bach, the IOC President, stated, "*allowing [Russian athletes] to continue participating would mean only Ukrainian athletes would be left out and unable to compete while their country is under attack by Russia.*" Allowing Russian Athletes to compete would undermine the FEI objective in Article 1.3 of the Statutes whereby Athletes and teams from different nations must compete "*under fair and even conditions*". If conditions were not so, this would significantly damage the integrity of FEI Events. Although it may not be the fault of the FESR, its Athletes and Officials for the actions of their government, it is not the FEI's fault either. The Resolution ensures fair and even conditions.

Protective Measure

53. Article 1.6 of the Statutes discusses another FEI objective, which is to foster *harmonious collaboration* among NFs, Athletes and Officials. The Panel agrees that the potential for boycotts could arise if FESR Athletes, Officials and teams were permitted to compete in FEI Events. Boycotts were a potential reality at the Winter Paralympic Games and the 2022 World Championships until the IPC and FINA respectively reversed their decisions, which initially allowed Russian athletes and teams to compete.

54. Any boycott at FEI Events would seriously challenge the goal of harmonious collaboration. If, for example, FESR Athletes, Horses and Officials were permitted to compete at the upcoming 2022 FEI World Championships and other nations boycotted this Event, there would be no point to a world championship. The goal of harmonious collaboration would cease to exist and the Event's integrity, significantly damaged. At the hearing, the FESR did not present any solutions on how the FEI could handle boycotts if FESR Athletes and Officials were allowed to participate.
55. Safety is paramount. If there is a potential for protests should FESR Athletes and Officials be allowed to participate, this could put their safety as well as the safety of other Athletes and Officials at risk. Equestrian sport is unique in that we also have to consider the safety of the Horses. They are much less capable of defending themselves should a protest become violent. Therefore, the potential for boycotts and protests is enough for the Panel to find that there is indeed an emergency situation and agrees the Resolution provides a protective measure.
56. The Resolution further prevents the possibility that FEI Events are used as a political platform. The FESR suggested the FEI was mixing politics with sport when it adopted this Resolution. However, we have actual examples of prominent Russian athletes wearing the symbol, Z as a sign of support for Russia's invasion of Ukraine. This is mixing politics with sport with an enormous megaphone. This Panel states that FEI Events cannot be used as a political platform.

No Suspension and Proportionate

57. This Panel agrees with the FEI that the FESR, its Athletes and Officials are not suspended because their membership rights are not affected by the Resolution, they can still vote and put themselves forward as candidates, Officials can continue to take FEI courses, and they may provide feedback on proposed changes to FEI Rules and Regulations. Although they cannot participate in FEI Events, they can still continue to compete in national events in Russia.
58. The Panel accepts the FEI's response that the Resolution does not have a time limit because it is specifically linked to the ongoing war. Nobody can answer how long Ukrainian Horses will remain in emergency shelters or Ukrainian Athletes must limit their participation in FEI Events. It is unknown whether they are able to practise but it is more likely than not that their priority is survival.

59. The Panel acknowledges Mr. De Vos' statement to each registered Russian (and Belarusian) Athlete and Official in which he states he hopes "to welcome you back in international competitions very soon" and trusts the FEI Board will reexamine the Resolution once the circumstances in Ukraine change for the better.

Due Process and Autonomy

60. The Panel is satisfied that the FEI Board satisfied the preconditions before adopting the Resolution and its corresponding formalities. It is true that Article 20.3 of the Statutes requires *immediate* action, so a mandatory right to be heard is not a prerequisite. The Resolution did not arise out of disciplinary proceedings or an alleged breach of the FEI Rules and Regulations. This Article may further be contrasted with Article 8 of the Statutes whereby before a National Federation is suspended, it is afforded the right to be heard.

61. The Panel further acknowledges that although it was not necessary, the FEI Secretary General informed the FESR that the FEI Board would be considering the IOC Recommendation and kept the FESR apprised of developments before the Resolution was adopted. At that time, the FESR did not put forth any arguments to protest the adoption of the Resolution. The FESR President representing Regional Group III expressed her say in the Resolution by voting against it. Therefore, the Panel finds the FEI went beyond the necessary due process requirements.

62. The Panel does not need to delve into an in-depth analysis of the SCC or Swiss law on whether the FEI acted beyond its autonomy when it adopted the Resolution. Given the FEI Board validly exercised its power by fulfilling the two preconditions and formalities in Article 20.3 and the Resolution is in keeping with FEI objectives in Articles 1.3 and 1.6, it is only logical that the FEI did not breach any Swiss laws and acted appropriately within its autonomy.

Discrimination

63. The FESR stated the Resolution is discriminatory and contrary to the principle of Article 2.1 of the Statutes, which is based on the principle of equality and mutual respect between all NFs, without regard to ethnicity, political opinion or national origin. The FEI disagreed and stated the Resolution is a protective measure to ensure a level playing field as well as the safety and integrity of FEI Events.

64. The FESR mentions other military conflicts where the FEI and other IFs did not impose sanctions on sport. The Panel is not in a position to comment on other military conflicts except for this one, which precipitated the Resolution. Furthermore, it cannot be

understated that the Russian government breached the Olympic Truce, the period of time meant to encourage global peace that extends before and after the Olympic and Paralympic Games.

65. This is a situation where the rights of the individual must be weighed against the interests of the collective. Article 2.1 is, first and foremost, based on the principle of *equality and mutual respect between all NFs*. The invasion of Ukraine by Russian military forces clearly does not espouse this principle.
66. The adoption of the Resolution was predicated on ensuring a level playing field and the safety and integrity of FEI Events, which this legal discussion has already addressed. If Ukrainian Athletes cannot compete because they are focused on their survival, then FESR Athletes should not be allowed to compete. If there is the potential for boycotts and protests, then the Resolution properly protects the interests of the collective by preventing FESR Athletes and Officials from participating in FEI Events.
67. The Resolution may not seem fair to FESR Athletes who condemn this war, but the Panel did not receive a straight answer from the FESR at the hearing on whether the FESR would allow these Athletes to compete.
68. The FEI stated that many institutions such as Swiss banks have taken measures in response to the war and specifically targeted Russian individuals and banks. The Panel agrees with the FEI that it cannot be simply stated that these institutions acted in a discriminatory manner. The same can be said for the Resolution.

Costs

69. The Panel finds the FEI's request for costs of CHF 3'000 is reasonable and in keeping with the *FEI Guidelines for Fines and Contributions towards Legal Costs*.

DECISION

70. The Tribunal decides as follows:

1. The Appeal is admissible.
2. The Appeal is dismissed.
3. The Resolution is upheld.
4. No Deposit will be returned to the FESR.
5. The FESR will pay a contribution of CHF 3'000 towards the costs of the proceedings.

71. According to Article 165 of the GRs, this decision is effective from the date of oral or written notification to the affected Party or Parties.

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

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. Any other: No

FOR THE TRIBUNAL

Ms Harveen Thauli (CAN), Chair of the Panel