



**CAS 2019/A/6202 Ignasi Casas Vaque v. Federation Equestre Internationale (FEI)**  
Tribunal Arbitral du Sport  
Court of Arbitration for Sport

## **ARBITRAL AWARD**

**delivered by the**

### **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition**

President: Ms. Petra Pocrnic Perica, Attorney-at-law in Zagreb, Croatia  
Arbitrators: Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal  
His Honour James Robert Reid, QC, Retired Judge in Wess Liss, United Kingdom

**in the arbitration between**

**Ignasi Casas Vaque, Spain**

Represented by Dr. Jan Kleiner, Attorney-at-law at Bär and Karrer AG, Zurich, Switzerland

**- Appellant -**

**and**

**Fédération Equestre Internationale (FEI), Switzerland**

Represented by Mr. Jonathan Taylor QC and Mr. Richard Bush, Attorneys-at-law at Bird & Bird LLP, London, UK

**- Respondent -**

## **I. PARTIES**

1. Dr. Ignasi Casas Vaque (the “Appellant”) is a Spanish national, who is a veterinarian, and an official at both the senior national and the Fédération Equestre Internationale (“FEI”) levels (his role being Member and Deputy Chair of the FEI Endurance Committee).
2. The FEI (the “Respondent”) is a Swiss law association established in accordance with Articles 60 et seq. of the Swiss Civil Code, with headquarters in Lausanne, Switzerland. It functions as the international governing body for the equestrian sport disciplines of dressage, jumping, eventing, driving, endurance, vaulting, reining and para-equestrian. Its members are the national bodies of the sport.

## **II. BACKGROUND**

### **A. Factual Background**

3. Below is the summary of the relevant facts and allegations based on the Parties’ submissions on the merits of this Appeal. Additional facts and allegations found in the Parties’ written submissions may be set out, where relevant, in connection with the legal discussion that follows. While the Panel considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. The World Equestrian Games (the “WEG”) are the major international championships for equestrianism, which are administered by the FEI. Since 1990, the games have been held every four years, halfway between sets of consecutive Summer Olympic Games.
5. In September 2018, the WEG took place in Tryon, North Carolina, USA (the “WEG 2018”).
6. The Appellant participated in the WEG 2018 as a member of the Spanish Endurance Riding Team and served as the Chef d’Equipe.
7. Normally, some months before every WEG, as part of the preparation process, a Test Event takes place. With respect to the WEG 2018, in April 2018 the Test Event (“2018 Test Event”) took place in Tryon at the venue at which the upcoming WEG were to be held.
8. The 2018 Test Event revealed prospective difficulties for the future WEG 2018 in the form of high temperatures, humidity and bad coverage of the GPS tracking system.
9. Notwithstanding the identified likely difficulties, the FEI decided to go on with the event. The decision to continue with the Endurance Event (initially scheduled to be a 160 km race) was influenced by the fear that, if the Endurance Event was abandoned, there would be a withdrawal of sponsorships, which would endanger the FEI’s ability to proceed with the remaining events.

10. When horses and riders arrived in Tryon in August 2018, everybody faced huge logistical and organizational problems. There were ongoing construction works with heavy machinery making noise and causing stress to the horses. Horses were put in the wrong stables. Pyro-positive horses were mixed with pyro-negative horses. Riders were denied access to their horses. There was not enough fresh water, hay or ice. The ventilation system was inadequate, resulting in odours. Hygienic and sanitary conditions were very bad with limited washing facilities.
11. From the time of the arrival in Tryon, Dr. Casas not only supported his own team, as was his primary responsibility, but also was very helpful to other teams as well, organizing fresh hay and drinking water for his team and others.
12. The day before the Endurance Event, the teams got the information that the crucial race parameters were about to change (permissible ground speed, maximum heart rate and resting time). There was a view that this change would fundamentally change the competition just a day before the start, so some teams submitted a Pre-race Protest.
13. On the day of the Endurance Event, 12 September 2018, participants came to the Tryon centre at 5.30 a.m. but faced a lack of information about the exact starting point. A little bit later, the horses were directed to the Vet Gate area (the "VG") for the distribution of a second GPS system. As the "GPS decision" had taken place the night before but had not been communicated to the participants, it resulted in queues, huge confusion and race delays. Some riders could not follow the car to the correct starting point in time so they followed the natural path of the trail and ended up at the wrong starting place with the Ground Jury Members. This resulted in different starting points and one loop was approximately a few kilometres longer than the other.
14. This false start led to the decision that the race should be cancelled.
15. The Chefs d'Equipe held a meeting and, after discussing potential solutions, proposed to re-start the race on another day, another time or another place since some horses had been on the race track for a longer distance than others.
16. A new decision to re-start the race at midday was issued, which caused concerns for the welfare of the horses and further protest because of the increasing heat, upcoming darkness at the end of the race, lack of proper lightning installations and the unfairness on the sporting level because some horses, which had already been on their first loop for about 40 km, now had to take a break for few hours and start the new race again.
17. Eighteen Chefs d'Equipe filed a protest against the decision to re-start the race before the Ground Jury and proposed that the event be re-organized some months later in Europe. The protest was rejected and the race was set to re-start at 11:15 am.
18. The race re-started, and continued for several hours; however, at around 5 pm, with some riders close to the finish line, it was cancelled again because of the heat and the humidity levels, which had increased in the afternoon.
19. There were strong reactions to the cancellation. Some people shouted and protested. Some broke down the fencing surrounding the VG. Some were physically violent and some got arrested.

20. The Appellant was still on the track supporting his team, which at that point had riders in several leading positions. After the race was cancelled, he drove back to the VG with the aim of preventing the cancellation, which he considered to be unfair.
21. There is a video footage taken by an unidentified person of the events taking place at the VG after the race cancellation showing, *inter alia*, the Appellant and his reactions, which included shouting in the direction of FEI officials and the crowd, and gesticulating.

### **B. Proceedings before the FEI Tribunal**

22. On 15 October 2018, the Respondent sent the Appellant a Notification letter alleging that his conduct at the WEG 2018 breached various FEI Rules and Regulations, and therefore proposing sanctions of a two year suspension and a 2,000 CHF fine.
23. On 22 October 2018, the Respondent informed the Appellant that he had been temporarily relieved of his duties and obligations as Deputy Chair of the FEI Endurance Committee.
24. On 23 October 2018, the Appellant answered the Notification letter. He rejected the charges and the proposed sanctions.
25. On 28 October 2018, the Appellant was informed that the matter would be submitted to the FEI Tribunal.
26. On 13 November 2018, the Respondent submitted its Claim Brief and initiated the disciplinary proceedings before the FEI Tribunal against the Appellant, basing its case on the video footage and asserting that the Appellant's behaviour at the VG was contrary to the FEI's rules.
27. On 18 January 2019, the Appellant submitted his Answer Brief.
28. On 5 February 2019, a hearing took place in Lausanne, Switzerland.
29. The FEI Tribunal, with its decision dated 25 February 2019, found the Appellant to have committed several breaches of the FEI's rules (the "Appealed Decision").
30. **As to liability**, the FEI Tribunal rejected the charge of breach of Article 169.6.4 of the FEI General Regulations (i.e. the 23<sup>rd</sup> Edition, 1 January 2009, updated effective 2019, or the "FEI GR") on the basis that no legal or factual evidence was presented that established a criminal act under North Carolina law, and it rejected the charge of breach of Article 163.9 of the FEI GR on the basis that "*the Respondent's actions were not a significant factor in causing damage to the FEI's reputation, as it had already been damaged by the [poor organisation and errors in the] running of the event itself*".
31. However, the FEI Tribunal upheld the FEI's allegation that the Appellant had breached Article 169.6.3 of the FEI GR on the following basis:

*"9.9 The Tribunal finds that the Respondent engaged in multiple violations of Article 169.6.3 of the GRs, and more specifically a), i.e., Incorrect behaviour towards Event Officials. The Respondent had a heightened duty to act appropriately with event*

*officials and other competitors during the Event. He was the Chef d'Equipe for the Spanish Endurance Team, a FEI veterinarian, and a member and Deputy Chair of the FEI Endurance Committee. The Tribunal finds that, being both a leader in the FEI Endurance Community and a veterinarian, he had a duty to enforce FEI Rules, to be respectful to other competitors and officials and to maintain a safe environment for the horses competing in the Event.*

*9.10 The Tribunal recognises that the Endurance Competition at the 2018 WEG had multiple problems and mistakes were made by the organisers and officials that caused legitimate frustration, disappointment and anger amongst the competitors and teams. The Tribunal also recognises that some expressions are unique to the Spanish language, and a literal translation into English may not accurately reflect the meaning and intent of the phrase in Spanish. Furthermore, the Tribunal notes that members of the press and public were present during the events after the decision to re-start the Competition and after the decision to cancel the Competition was made."*

32. The FEI Tribunal found that the Appellant had committed the following four violations:

*"Violation #1:*

*9.11 The Tribunal finds that shouting phrases such as "The riders will kill you", and "Are you stupid or what?" rises to the level of Incorrect Behaviour when repeatedly shouted at FEI Officials in front of members of the press and public."*

*"Violation #2:*

*9.12 The Tribunal further finds that accusing a FEI Official, in this case the President of the Ground Jury, of being a "Cheater" constitutes Incorrect Behaviour in this case, and even more so because it was shouted in front of the public, press and other competitors. Furthermore, the Tribunal finds that publicly calling the President of the Ground Jury a "Cheater" impugns the integrity of a FEI Official."*

*"Violation #3:*

*9.13 Moreover, the Tribunal finds that the Respondent engaged in Incorrect Behaviour when he encouraged non-accredited members of the public to violate FEI regulations and enter the restricted vet check area by gesturing with his hand and repeatedly yelling "Come On" to an already angry crowd.*

*9.14 The Tribunal notes in this respect that Competition horses were present in the vet check area when the decision to cancel the Competition was made. There was loud protesting and yelling by the spectator crowd surrounding the vet check area, which was creating a disturbance for the horses. The Tribunal finds that the Respondent intentionally turned towards the agitated crowd and signalled them to both increase their protesting and to enter the restricted area. The Tribunal finds that this was an intentional encouragement to violate FEI rules. Furthermore, the Respondent's actions increased the level of agitation of an already angry crowd.*

*9.15 The Tribunal therefore finds that it was Incorrect Behaviour to encourage non-accredited event members and the public to enter the vet check area where horses were being cared for. The Tribunal finds that this created an increased risk of harm to the horses present in the vet check and was impeding the ability of support crew to care for them.*

*9.16 In his regard, the Tribunal notes that an unidentified person (either FEI Official or member of security staff) then warned people that there were horses being cared for*

*in the restricted area and to stop yelling. Shortly after, an unidentified person pulled down one of the perimeter barriers which allowed unaccredited persons to have access to the vet check area.”*

*“Violation #4:*

*9.17 The Tribunal finds that the Respondent engaged in Incorrect Behaviour again when he encouraged non-accredited members and the public to enter the restricted vet check area a second time after the perimeter fence had been pulled down. The Respondent ran back to the perimeter fence and by gesturing with his hand and yelling to an already angry crowd, the Respondent encouraged entry into the restricted vet check area. Not only did this increase the risk of harm to FEI Officials but it put the welfare of the horses in the vet check at risk of harm. The steward had warned everyone that there were horses requiring care, and the Respondent had a responsibility as a FEI veterinarian, a Chef d'Equipe and a Deputy Chair of the Endurance Committee to not only comply with FEI rules but to also make sure that the welfare of the Competition horses was safeguarded. The Respondent, however, failed to fulfil his responsibilities to comply with FEI rules and to help maintain a safe environment for the competitors and horses in the vet check area. The Respondent did exactly the opposite of what was required in this volatile and potentially dangerous situation.”*

33. The FEI Tribunal summarized its findings as follows:

*“9.18 In summary, therefore, the Tribunal finds that the Respondent has breached Article 169.6.3 of the GRs multiple times. Contrary to the Respondent’s submissions, the Tribunal finds that he did behave incorrectly within the meaning of Article 169.6.3 of the GRs. As set out previously, the Tribunal finds that his behaviour was not appropriate, even when taking into account the circumstances at the Event.”*

34. Based on the findings of the breach of Article 169.6.3 of the FEI GR, the FEI Tribunal did not consider further the alleged breach of Article 38.1 of the FEI Statutes (general infringements during FEI events), on the basis that the former was the *lex specialis* and therefore applicable instead of the more general Article 38.1 of the FEI Statutes.

35. In terms of sanctions, the FEI Tribunal found as follows:

*“9.23 Given that the Respondent has engaged in multiple violations (four (4) in total) of Article 169.6.3 of the GRs, the Tribunal finds the maximum suspension provided in this provision, and a fine of 2,000 CHF as proportionate in the present case. The Tribunal has also taken into account that the Respondent is a first-time offender, as well as the circumstances at the Event. In addition, the Tribunal has also considered that the Respondent has – thus far – not apologised or attempted to apologise to – in the Tribunal’s view most obvious persons – the FEI Officials who were at the receiving end of his actions.”*

36. Therefore, the FEI Tribunal imposed on the Appellant a suspension of twelve (12) months from acting as an FEI official or having any involvement in FEI activities at a national or international level, a fine of CHF 2,000, and the order to contribute the amount of CHF 3,000 to the cost of the procedure before the FEI Tribunal.

37. The decision of the FEI Tribunal dated 25 February 2019 reads as follows:

*“10. Decision*

*10.1. In accordance with Articles 169.6.3. and 169.5.1. of the GRS the Tribunal imposes the following sanctions on the Respondent:*

- 1) The Respondent shall be suspended for a period of twelve (12) months from acting as an FEI Official or having any involvement in FEI activities at the national or international level, starting from the date of the present Decision. Therefore, the Respondent shall be suspended through 24 February 2020.*
- 2) The Respondent shall be fined two thousand Swiss Francs (CHF 2,000).*
- 3) The Respondent shall contribute three thousand Swiss Francs (CHF 3,000) towards the cost of this procedure.*

*10.2 According to Article 168 of the GRs this Decision is effective from the date of oral or written notification to the effected party or parties.*

*10.3 According to Articles 165.1.3. and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within 21 days of the present notification.”*

**III. PROCEEDING BEFORE THE COURT OF ARBITRATION FOR SPORT**

38. On 15 March 2019, the Appellant lodged his Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the 2019 Edition of the Code of Sports-related Arbitration (the “CAS Code”) against the Appealed Decision. In his submission, the Appellant nominated Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal, as arbitrator and requested the matter to be expedited in accordance with Article R52 of the CAS Code. He also requested for the operative part of the award to be issued by June 2019.
39. On 20 March 2019, in its letter to the Parties, the CAS Court office acknowledged receipt of the Statement of Appeal, communicated the Appellant’s request for the expedited procedure, the deadline for filing the Appeal Brief and also the deadline for the Respondent to inform the CAS whether it accepted the request for the expedited procedure. In case of acceptance the Parties would be invited to jointly submit an expedited procedural calendar replacing the deadline set forth by CAS in accordance with the CAS Code, but in case of objection or no answer from the Respondent, no expedited procedure would be implemented.
40. On 22 March 2019, the Respondent nominated His Honour James Robert Reid QC, Retired Judge in Wess Liss, United Kingdom, as arbitrator and objected to the request for the expedited procedure. Therefore, the Parties were informed that no expedited procedure would take place in the present matter.
41. On 26 March 2019, the Appellant requested an extension of the deadline to file his Appeal Brief, to which the Respondent was invited to agree.
42. On 27 March 2019, the Respondent stated that it did not agree with the Appellant’s request for an extension of time to file his Appeal Brief. The CAS Court Office informed the Parties on the same date that, in light of the Parties’ disagreement, it would be for the President of the Division, or her deputy, to decide the issue, but that in the meantime the Appellant’s deadline to file his Appeal Brief was suspended.
43. On 3 April 2019, the CAS Court Office advised the Parties that the President of the

CAS Appeals Arbitration Division has decided to partially grant the extension of the deadline to file the Appeal Brief requested by the Appellant and informed them of the new deadline.

44. On 4 April 2019, Mr Botica Santos provided a disclosure to the Parties, who were reminded that pursuant to Article R34 of the CAS Code, a challenge must be brought within seven days after the grounds for challenge had become known.
45. On 11 April 2019, the Appellant requested an additional extension to file the Appeal Brief by one day, which was granted under Article R32 of the CAS Code.
46. On 12 April 2019, the CAS Court Office advised the Parties that no challenge had been filed against Mr Rui Botica Santos in the timelimit prescribed within Article R34 of the CAS Code.
47. On 15 April 2019, in accordance with the Article 54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President: Ms. Petra Pocrnić Perica, Attorney-at-law in Zagreb, Croatia

Arbitrators: Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal  
His Honour James Robert Reid QC, Retired Judge in West Liss, UK

48. On 15 April 2019, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
49. On 24 April 2019, the Respondent pointed out that the Appellant proposed in its Appeal Brief to call Mr. Kevin Crooke as a witness in the present matter. It noted that the Appellant asserted that Mr. Crooke would testify, *inter alia*, about the assessment of Appellant's reactions regarding (i) the events at the VG after the cancellation of the race and (ii) the Appellant's character, but that no witness statement in support of Mr. Crooke's intended testimony had been enclosed with the Appeal Brief. The Respondent's view was that the summary of Mr. Crooke's intended testimony was far too brief for the Respondent to fairly address and respond to the witness evidence of Mr. Crooke, and it would be unfair if the Respondent was taken by surprise at the hearing. Accordingly, it was the Respondent's submission that the lack of the witness statement did not comply with the wording of the Article R51 of the CAS Code, and therefore requested that CAS order the Appellant to produce Mr. Crooke's witness statement.
50. On 26 April 2019, the Appellant responded that together with his Appeal Brief, he duly submitted a summary of the expected witness testimony of Mr. Crooke which clearly listed the scope and content of his expected declaration. This was entirely in line with Article R51 of the CAS Code. Furthermore, in the Appellant's view, there was no way that the Respondent could be ambushed by any of the testimony since the Respondent itself had commissioned numerous investigations concerning the failures and incidents at the WEG 2018, some of which concern exactly the scope of Mr. Crooke's expected testimony, the content of which was more familiar to the Respondent than to any other party.



51. On 30 April 2019, on behalf of the Panel, the CAS Court Office invited the Appellant to specify: (i) the expected testimony about Mr. Crooke's assessment of the Appellant's reactions; (ii) the expected testimony about the events at the VG after the race cancellation; and (iii) the expected testimony concerning the Appellant's character.
52. On 6 May 2019, the Appellant requested a three-day extension to provide the additional information about the testimony of Mr. Crooke. The request was granted, but on 10 May 2019, the Appellant withdrew Mr. Crooke as a witness.
53. After consulting with the Parties about the date of the hearing that the Panel decided to hold, on 16 May 2019, the CAS Court Office informed the Parties that a hearing would be held on 10 July 2019 in Lausanne, Switzerland.
54. After requesting the extension of the deadline to file its Answer, to which the Appellant did not object, on 3 June 2019 the Respondent filed the Answer Brief pursuant to Article R55 of the CAS Code.
55. On 21 May 2019, the Respondent signed and returned the Order of Procedure to the CAS Court Office. The Appellant signed and returned the Order of Procedure to the CAS Court Office on 24 May 2019.
56. On 9 July 2019, the Respondent submitted to the CAS the proposed hearing schedule and explained that, subject to the Panel's approval, the Parties had agreed that the witnesses' statements on the record were to be taken as evidence-in-chief, and where a witness was listed in the schedule, the Parties agreed that there should be only brief direct examination followed by the cross-examination and then re-direct, but that the Panel has the right to address the Parties or the witnesses at any time.
57. On 10 July 2019, the hearing took place in Lausanne, Switzerland, at which the Panel was assisted by Ms Andrea Sherpa-Zimmermann, CAS Counsel. At the outset of the hearing, the Parties confirmed not to have any objection as to the constitution and composition of the Panel nor to the amended hearing schedule proposed by the Panel.
58. The Appellant was represented by his attorney, Dr. Jan Kleiner. In addition, a translator attended the hearing on behalf of the Appellant.
59. The Respondent was represented by its attorneys, Mr. Jonathan Taylor QC and Mr. Richard Bush. On behalf of the Respondent, the following person attended the hearing:
  - Ms. Ainé Power, FEI Deputy Legal Director.
60. The following witnesses gave evidence before the Panel:
  - Mr. Antonio Farrim (by video);
  - Mr. Fernando Carillo (in person);
  - Mr. Fernando Uriarte (by video);
  - Ms. Sabrina Ibañez, FEI Secretary General (in person); and
  - And at the end, the Appellant gave his statement.
61. The Parties throughout the hearing did not raise any additional procedural objections and expressly confirmed at the end of the hearing that their right to be heard and to be

treated equally had been respected, as they had been given ample opportunity to present their cases and submit their arguments and answers.

#### IV. PARTIES' SUBMISSIONS

62. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Panel has thoroughly considered in its deliberation all the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

##### A. Appellant's Submissions

63. The Appellant's submissions may be summarized as follows.

64. The Appellant was part of the Test Event in April 2018 where the Respondent was warned about the climatic challenges and other difficulties, and was given recommendations how to overcome them in forms of letters and reports addressed to Respondent. The Test Event and the preparations for the WEG 2018 were discussed at the Endurance Technical Committee ("ETC") on 18 July 2018, when it was reported that the Test Event revealed serious problems with the GPS coverage and tracking system.

65. The Appellant described in detail his impressions of the organization of the WEG 2018 as being a disorganised, chaotic and extremely disappointing event.

66. The Appellant described the **pre-race events** and explained in detail how, for example, many facilities for the WEG 2018 were still under construction, with heavy machinery in place causing noise and stress for the horses, how horses were mixed up and put in the wrong stables, how pyro-positive horses were put with the pyro-negative horses, how the riders were denied access to their horses, how there was lack of food and water, how terrible the hygiene and sanitary conditions were, and how the ventilation did not work, which all together put a high risk on the welfare of all participants. During the whole event, the Appellant tried to provide help to other teams as well and was highly responsible for the Spanish team's welfare.

67. The Appellant described the **day of the race** and the events taking place before the final cancelation of the Endurance race:

(i) The day before the Endurance Event, the teams were informed that crucial race parameters were about to change which would fundamentally change the competition just a day before the start. In this regard, some of the teams submitted the Pre-race Protest.

(ii) On the day of the Endurance Event, participants were faced with lack of information about the exact starting point. Horses were directed to the VG area for the distribution of the second GPS system which was not communicated to the participants until that moment and resulted with confusion and race delays (since some riders could not follow the car to the correct starting point and

ended up at the wrong starting place). In the end, not all participants departed from the same starting point.

- (iii) The false start led to the decision to cancel the race. The Chefs d'Equipe held a meeting and proposed re-starting the race on another day, another time or another place since some horses had been on the race track for a longer distance than others. Nobody wanted to re-start the race since the Endurance discipline is specific: you cannot start, stop and re-start again with the same quality and some horses were on the track longer than others.
- (iv) With the new decision to re-start the race at midday, there were concerns for the welfare of the horses (because of the increasing heat, upcoming darkness at the end of the race and lack of proper lightning installations). These were matters that the Respondent already knew the day before the race, since the forecast predicted very high level of humidity and heat reaching a peak in the afternoon. Also, there was the un-fairness on the sporting level (some horses were already on their first loop for about 40 km, had to make a break for few hours and start a new race again, so horses that managed to be in the lead after the first loop were suddenly forced to go back to the starting point).
- (v) The clear majority of the involved persons were against the re-start, preferring to postpone the event. Eighteen Chefs d'Equipe protested the decision to re-start the race; however, their protest was rejected.
- (vi) After the race re-started, it continued for several hours; however, around 5 pm, with some riders close to the finish line, it was cancelled again because of the heat and the humidity level that had increased in the afternoon. These reasons were exactly the reasons the Respondent had been warned about at the Test Event and throughout the race day.
- (vii) At the time of the cancellation, the Spanish team held several leading positions.

68. The Appellant described the **post-cancellation events** as follows:

- (i) When the race was cancelled, the Appellant was still on the track supporting his team. After he heard the news, he drove back to the VG with the aim of preventing the cancellation, which he considered to be unfair.
- (ii) Regarding other people's reactions, there were already high tensions in respect of the cancellation: some people shouted, some cried, some protested, some broke down to the VG area and some were even physically violent. The police were called for assistance and some people got arrested.

69. The Appellant described **his reactions and behaviour**:

- (i) When he arrived at the VG, he encountered the President of the Ground Jury and the Ground Jury Members trying to prevent such a chaotic and unfair outcome by convincing the relevant FEI officials to change their decision. He was very emotional but not even remotely aggressive or violent, nor did he act inappropriately in any other respect.

70. In respect of the **proceedings before the FEI Tribunal** in October 2018, the Appellant received a Notification letter containing several accusations with the proposal of two years' suspension and the 2,000 CHF fine. Further, the Respondent informed him of the provisional release from his duties as Deputy Chair and Member of the FEI Endurance Committee pending the outcome of the legal proceedings before the FEI Tribunal. As the Appellant rejected all charges, he was informed that the matter would be submitted to the FEI Tribunal.
71. Before the FEI Tribunal, the Respondent claimed that the Appellant was aggressive, violent, incited riots and made death threats. It supported its allegation with the video footage, but according to the Appellant this showed only isolated few scenes from the footage which is more than 40 minutes long without disclosing the gravity of the organizational flaws with the aim of avoiding this to be considered mitigating circumstances.
72. The FEI Tribunal rightly dismissed most of the charges, such as the charge for (i) death threats, (ii) engaging in riots or inciting others to engage in riots and (iii) committing an act of violence.
73. Nevertheless, the FEI upheld the charges of *"incorrect behaviour towards FEI officials"* and the four different breaches of the Article 169.6.3. of the FEI GR, imposing a maximum sanction of 12 months' suspension. That, according to the Appellant, was legally wrong, disproportionate and untenable because the Appellant was never violent nor aggressive or behaved incorrectly, but rather was simply frustrated and voiced his disagreement and disappointment as an overall reaction in one continuous action within a time frame of a few minutes only, at the same place and in the same context by saying:
- "We did it all that for nothing! Years and years of working", "It is not fair. It's wrong totally", "Now that we are winning, boom, out... You have been wrong the whole day, just as you have been wrong all these days."*
74. Regarding **Violation No. 1** and the FEI Tribunal's view, that when using the phrases *"the riders will kill you"* and *"are you stupid or what"*, the Appellant behaved incorrectly and breached Article 169.6.3. of the FEI GR, the FEI Tribunal contradicted its own reasoning since it already established, when the allegations of the death threats were discharged, that the expression *"the riders will kill you"* is a figure of speech and that such expression, as *"eres tonto or que"* is unique to the Spanish language. If literally translated, it does correspond to the phrase *"are you stupid or what"* but the literal translation into English may not accurately reflect the meaning and the intent of the phrase in Spanish. Equally, the FEI Tribunal totally disregarded the fact that this disagreement was between the persons who had known each other very closely for more than 15 years, which would explain the direct language in the hectic situation that took place.
75. Regarding **Violation No. 2** and the FEI Tribunal's view, that when using the expression *"you are a cheater"* when trying to convince the FEI officials to change the decision, the Appellant behaved incorrectly and breached Article 169.6.3. of the FEI GR, the Appellant's view was that his intention was misunderstood. The words he used in English were a translation from the expression used in Spanish, which is his mother

tongue. The Appellant never meant to insult or accuse anyone of being corrupt, instead what he meant was “*estais hacienda trampas, teneis que arregrarlo*” which is very particular and colloquial Spanish expression and means: “*you are cheating you have to fix this*”. At one point the FEI Tribunal established that such expressions were unique to the Spanish language but later ignored its own findings. Even if translated in English the phrase “*hacer trampas*” could be translated “*to cheat*”, in Spanish language this phrase does not have such negative connotations such as intentional rule breaker or cheater, like in English. All this, according to the Appellant, could be substantiated by the fact that on the “*field of play*” no authorized person issued any kind of sanction or warning even though there was a possibility of issuing a White or Yellow Card against the Appellant. This was because Appellant’s reactions were understandable to everybody involved and present on the ground.

76. Regarding **Violation Nos. 3 and 4**, according to the Appellant, the FEI Tribunal’s view was both legally and factually wrong when it established that the Appellant “*engaged in incorrect behaviour when he encouraged non-accredited members of the public to violate FEI regulations and enter the restricted vet check area by gesturing with his hand and repeatedly yelling “Come on” to an already angry crowd*” and also at the later point of time “*ran back to the perimeter fence and by gesturing with his hand yelled to an already angry crowd.*”
77. The FEI Tribunal’s decision is legally wrong because the Appellant cannot behave incorrectly towards a crowd, since whatever his action towards the crowd was, it cannot fall under the Article 169.6.3. of the FEI GR since this provision addresses solely the interactions between the person (in this case the Appellant) and another person (i.e. officials, athletes, journalists, etc.).
78. Furthermore, it is factually wrong since the video footage clearly shows the moment when the race was cancelled and people who immediately started to scream, shout and kick against the fences, when the Appellant was not even present at the VG. Only later the Appellant arrived, at which time he was understandably very emotional and angry but never incited any riots or encouraged anyone to enter the restricted area. This was even more substantiated by the fact that when certain individuals entered the restricted area, the Appellant had already left, and came back only to find his assistants, who were outside.
79. In support of his submissions, the Appellant enclosed the witnesses’ statements of:
  - (i) Mr. Anton Paul Bray
  - (ii) Mr. Tom Mac Guinness
  - (iii) Ms. Elvira Leyre Landa Moyano
  - (iv) Mr. Bernat Casals Fores
  - (v) Mr. Elke Peperkorn
  - (vi) Mr. Alex Luque Moral
  - (vii) Mr. Jean Philippe Frances
  - (viii) Mr. Jean Michael Grimal
  - (ix) Mr. Jaume Punti Dachs
  - (x) Dott. Fabrizio Pochesci
  - (xi) Dott. Angelo Paris
  - (xii) Mr. Avril Joan Bray
  - (xiii) Mr. Fernando Uriarte

- (xiv) Mr. Fernando Carillo
- (xv) Mr. Antonio Farrim

80. **In conclusion**, it was the Appellant's view that his behaviour should be assessed as one overall reaction. He used expressions from his mother tongue which, as the FEI Tribunal itself confirmed, cannot be literally translated and were not meant as they would appear based on a literal translation, nor did he incite any spectators to misbehave. This all together means that the Appellant did not breach any rule.
81. Regarding the **imposed sanction**, despite rejecting the most serious charges brought against him by the Respondent and despite all the mitigating circumstances, when the FEI Tribunal imposed the maximum sanction available under Article 169.6.3. of the FEI GR, i.e. a 12-month suspension, it acted disproportionately and legally incorrectly.
82. According to CAS jurisprudence (*CAS 2018/A/5808*) whether and to what extent a federation is bound by the principle of proportionality or the principle of equal treatment when exercising its disciplinary powers is a question of law and not an issue within the free discretion of a federation, and CAS has a full power to review the facts and the law in the present matter. The FEI Tribunal violated both the principle of proportionality and the principle of equal treatment.
83. It violated the principle of equal treatment when the Appellant was treated unequally compared with other persons in the VG. Even though there were people present who physically assaulted FEI officials (both Mr. Crooke and Mr. Fernando Carillo were punched and reported the assaults against them) and others behaved so badly that they were arrested by the police, disciplinary proceedings were opened only against the Appellant.
84. Moreover, in those disciplinary proceedings, he was sanctioned with the maximum penalty when in other cases of much worst incorrect behaviour, sanctions of between 2 and 4 months' suspension were imposed, and usually the offender was first sanctioned with a Yellow Card. This demonstrates that the FEI officials considered certain behaviour incorrect when still on the ground, which was not the case here. In this respect, the Appellant cited the previous FEI Tribunal jurisprudence in the cases of "*incorrect behaviour*" such as:
- the case of Mr. Vincent Gaudriout, Decision of the FEI Tribunal dated 15 August 2017, 2-month suspension;
  - the case of Mr. Antonio Vaz Freire, Decision of the FEI Tribunal dated 14 October 2017, 2-month suspension;
  - the case of Mr. Khaled Ebrahim Khalil Khari, Decision of the FEI Tribunal dated 13 February 2018, 3-month suspension; and
  - the case of Mr. Kevin Thornon, Decision of the FEI Tribunal dated 6 June 2017, 4-month suspension.
85. Also, the FEI Tribunal artificially split the Appellant's reactions into four separate breaches when it was only the one continuous course of action: it was a one reaction and there could only be one potential breach.
86. Even though it was required by the FEI Rules to take into consideration the mitigating circumstances (Article 5.2. of Appendix G to the FEI GR: "*When determining the*

*appropriate sanctions applicable, the FEI Tribunal shall take into consideration all aggravating and mitigating circumstances and shall detail the effect of such circumstances on the final sanction in the written decision”), the FEI Tribunal failed to take all the mitigating circumstances into account, of which there were many, including: the stressful situation; the shock and disappointment about the sudden loss on the sporting level after hard days of work; the chaos of the event; the atmosphere before, during and after the race; the widespread shock and disappointment, the angry outbursts of the crowd; the overall situation in the VG area; and the Appellant’s clean record and lifelong service to Equestrian sport.*

87. Therefore, the Appellant submitted that the sanction should be annulled because there was no breach of the FEI GR. Alternatively, in case of the establishment of a minor breach, the sanction must be drastically reduced.
88. Considering the above, the Appellant submitted the following **prayers for relief**:

*“1. The Appealed decision shall be annulled.*

*2. A decision shall be rendered by CAS, according to which the charges of the FEI against Dr. Ignasi Casas Vaque are dismissed and Dr. Ignasi Casas Vaque is declared not to have violated any rule or regulation in connection with the 2018 World Equestrian Games.*

*2A. In the alternative, a decision shall be rendered by CAS, according to which a maximum sanction of warning is issued against Dr. Ignasi Casas Vaque.*

*3. The FEI shall be ordered to immediately reinstate Dr. Ignasi Casas Vaque in his function as Member and Deputy Chair of the FEI Endurance Committee.*

*4. In any event, no costs related to the proceedings before the FEI Tribunal shall be charged against Dr. Ignasi Casas Vaque.*

*5. The FEI shall be ordered to bear the costs of the arbitration and it shall be ordered to contribute to the legal fees incurred by Dr. Ignasi Casas Vaque at an amount of CHF 20.000.”*

## **B. Respondent’s submissions**

89. The Respondent’s submissions, in essence, may be summarized as follows.
90. The Respondent’s view is that the Appellant deliberately failed to dwell on the facts upon which the FEI Tribunal based its decision that he had breached the FEI rule against the *“incorrect behaviour towards (a) Event Officials or any other party connected with the event (other Athlete, journalist, public etc)”* in a manner that warranted a one-year ban from FEI activities. This includes the fact that the Appellant is a very experienced and high-ranking official in equestrian sport, both at the national and international level, and as such he is expected to maintain the highest standards of integrity and conduct always, including in his dealings with FEI Officials tasked with applying FEI Rules and Regulations at FEI endurance events.
91. This was the clear expectation at the WEG 2018 when the FEI was forced to abandon the endurance competition due to dangerously humid weather conditions. The Appellant should have been helping to keep everyone calm, as befits a senior national and FEI official and leader. Instead, the Appellant completely lost his head, and in the view of the watching public and recorded on the video subsequently shared, he verbally abused FEI official saying: *“You crazy”, “Are you stupid or what”* telling them

menacingly that “*the riders will kill you. The riders will find you. The riders will travel on the horse. They will kill you.*” Also, he accused the FEI officials of deliberately cheating the Spanish team saying: “*You are a cheater*” and “*we are leading and you do not want us to win*” referring to the leading positions that Spanish team occupied. Furthermore, the Appellant incited the watching crowd to enter the restricted VG repeatedly yelling “*Come on!*” and gesticulating them to breach the perimeter fencing and enter the restricted area, where the horses were present undergoing medical inspections. By these actions, he not only increased the pressure on the FEI officials but also put the horses and people present at risk. Subsequently, the Appellant ran over to the crowd and repeated that encouragement after the perimeter fence had been pulled down by the angry crowd, and a steward had warned the people of the horses’ presence.

92. According to the Respondent, the FEI Tribunal rightly highlighted that, given the Appellant’s status and official roles at the national and international levels, he had a heightened duty to act appropriately towards event officials and other competitors during the event. Being both a leader in the FEI Endurance Community and a veterinarian, the Appellant had a duty to enforce FEI Rules, to be respectful to other competitors and officials, and to maintain a safe environment for the horses competing in the event. But contrary to his duties, the Appellant behaved as the FEI Tribunal correctly described and qualified it as repeatedly engaging incorrect behaviour according to the FEI GR.
93. Regarding the criticism of the organization of the WEG 2018, the Respondent accepted before the FEI Tribunal and accepts before the CAS that the circumstances surrounding the endurance competition at the WEG 2018 were challenging for all concerned and that emotions in general were running high. The Respondent acknowledged that this is something of a mitigating factor in the Appellant’s favour but it comes nowhere near excusing the Appellant’s conduct particularly given his very significant experience and seniority within the sport.
94. **Regarding the facts**, the Respondent submits that, after a group of riders and their horses were misdirected to the wrong starting point and as a result not all horses in the competition completed the same distance over the first loop, it was a matter of fairness to re-start the race as a 120 km instead of 160 km competition. It was always going to be the case that the race would be held during the hottest part of the day. In the lead-up to the race and at the time the decision was made to re-start the race, all the weather data indicated that the heat and humidity in the afternoon would be within tolerable limits. This changed after a heavy downpour and the heat and humidity index became very high and dangerous. It led the FEI officials to make the unanimous decision to cancel the competition in accordance to the FEI Rules, because of the extreme weather conditions which presented an unacceptable risk to the horses’ welfare. While many participants were frustrated about the cancellation of the competition, insults, threats and aggressive behaviour were totally unjustified.
95. **As to the Appellant’s behaviour**, the Respondent’s submission is that everything can be seen from the video footage which shows the VG where some horses are being inspected. When the announcement is made that the race is being abandoned due to the extreme weather conditions, the crowd behind the perimeter fence reacted angrily. The Appellant, whose team at that point held the first four positions, as the Chef d’Equipe of the Spanish team, was entitled to enter the VG. In the video footage he is shown doing the following:



- Shouting at the VG towards the Ground Jury member Mr. Crooke, *inter alia*, the following words: “*This is not allowed. You crazy! How can you cancel the race? How can you cancel the race! How can you cancel the race now. You cheater!*”;
  - Gesticulating to the crowd placed behind the perimeter using a windmill motion and shouting: “*Come on! Come on, let’s go you all! How can you stop the race?*”;
  - [When Spectators argue with the FEI officials and begin to enter the VG area after the perimeter fence is damaged, the Appellant was not present even though he had previously encouraged such behaviour];
  - Running back to the crowd and encouraging them to enter the VG area;
  - Running towards Ground Jury President Mr. Jean Pierre Allegret and shouting the words: “*Are you stupid or what? The riders will kill you. The riders will find you. The riders will travel on the horse. They will kill you.*” Mr. Allegret made no verbal reaction, but only gestured to the Appellant to stop and calm down; and
  - After remonstrating with the Technical delegate, coming back to Mr. Allegret shouting: “*We are leading and you do not want us to win! This is not fair. We did all that for nothing. Years and years of working. This is not the reason.*”
96. The Respondent’s submission is that the Appellant’s behaviour shown on the video footage is extremely serious because it took place at the VG area – a strictly regulated area dedicated to inspection and check on the health and welfare of the competing horses. The effect of the Appellant’s behaviour can be seen from the fact that one participant is crying over concern for his horse’s welfare.
97. The video footage was widely circulated and commented on, but the Appellant never apologised for or acknowledged the seriousness of his conduct.
98. After repeating the arguments submitted to the FEI Tribunal, the Respondent stressed that the subject of the present matter is the FEI Tribunal’s conclusions with respect to the breach of the Article 169.6.3. of the FEI GR. The Appellant’s arguments that the FEI Tribunal’s decision contradicts itself when, on the one hand, it established that the Appellant breached that rule and on the other hand stated that phrases used by the Appellant were “*merely a figure of speech, very common and accepted in English, Spanish and French*” (point 9.7. of the FEI Tribunal Decision) and that “*some expressions are unique to the Spanish language, and a literal translation to English may not accurately reflect the meaning and intent of the phrase in Spanish*” (point 9.10. of the FEI Tribunal Decision) are irrelevant, since those explanations FEI Tribunal used in connection with the breach of the Articles 169.6.4. and 163.9., which part of the FEI Tribunal’s decision is not appealed in these proceedings.
99. The Respondent stressed that there is no basis to overturn the FEI Tribunal’s decision that the Appellant breached Article 169.6.3. of the FEI GR for the following reasons.
100. Whether the Appellant’s conduct is taken as a whole or broken down into distinct violations, the outcome is the same.
101. Regarding **Violation No. 1** and the phrases “*the riders will kill you*” and “*are you stupid or what*”, none of the Appellant’s arguments (a figure of speech, unique expression in Spanish and phrases directed at people who Appellant has known for years) come close to establishing the grounds to overturn the FEI Tribunal’s decision since:

- (i) if an expression is a figure of speech it does not mean that it cannot constitute incorrect behaviour;
  - (ii) there is no explanation what the phrase “*eres tonto or que*” would mean differently in Spanish than “*are you stupid or what*”;
  - (iii) objective perspective is relevant for establishing whether behaviour is improper and incorrect, not what the Appellant subjectively wanted to convey or his relationship with the people to whom the improper words were directed to.
102. Regarding **Violation No. 2** and the Appellant’s argument that, when using the expression “*you are a cheater*” what he actually meant was “*estais hacienda trampas, teneis que arregrarlo*” (which is very particular and colloquial Spanish expression meaning “*you are cheating you have to fix this*”), and that none of the officials issued a Yellow Card or White Card or any kind of sanction or warning, the Respondent’s submission is that:
- (i) Shouting on its own constitutes incorrect behaviour;
  - (ii) There is no independent expert evidence that shouted words would potentially translated into some colloquial Spanish phrase;
  - (iii) The Appellant said words which are very unambiguous (“*How can you cancel the race now? You are a cheater!*”) and they need to be put into context of the words that followed, which were “*We are leading and you don’t want to win... this is not fair*” – which is consistent with the word “*cheater*” and which any objective observer would conclude as well; and
  - (iv) The fact that no sanction or warning was issued at the field under the relevant FEI Regulations is inconsequential since, as the Chef d’Equipe, the Appellant is not the person to whom a Yellow Card would be given nor does it constitute any reason for not considering certain behaviour incorrect.
103. Regarding **Violation Nos. 3 and 4** and the Appellant’s arguments that the FEI Tribunal’s Decision is legally wrong because the Appellant cannot behave incorrectly towards a crowd (since whatever his behaviour towards the crowd was, it cannot fall under the Article 169.6.3. of the FEI GR), the relevant article incorporates incorrect behaviour toward the public connected with the event as well. For the arguments that those findings are factually wrong because the crowd was angry without the Appellant, the Respondent argues that the FEI Tribunal Decision is very clear as is the reasoning for it, and regarding the Appellant’s behaviour towards the crowd it is clearly recorded. The fact that the crowd was angry only aggravates the Appellant’s behaviour.
104. **As to the sanction**, the Respondent argues that there is no reason to overturn the FEI Tribunal’s decisions.
105. According to the Respondent, there is well known CAS jurisprudence (*CAS 2010/A/2283*, para. 14.36; *CAS 2011/A/2518*, para. 15; *CAS 2012/A/2645*, para. 44) regarding the power and standards of review *de novo* according to which:

*“the CAS Panel would not tinker with a well-reasoned sanction i.e. to substitute a sanction of 17 or 18 months’ suspension for one of 18. It would naturally (...) pay respect to a fully reasoned and well-evidenced decision of such a Tribunal in pursuit of a legitimate and explicit policy. However, the fact that it might not*

*lightly interfere with such a tribunal's Decision, would not mean that there is in principle any inhibition on its power to do so"*

and

*"only when the sanction is evidently and grossly disproportionate to the offence should the CAS Panel exercise its power of discretion for reviewing the disciplinary tribunal's imposed sanction (CAS 2016/A/4501 para 313, CAS 2009/A/1817 & 1844 para 174)."*

106. The Respondent further submits that significant deference should be given to the Appealed Decision's judgement on what is the appropriate sanction in this case, i.e. what is necessary to:
- Punish the Appellant;
  - To protect other stakeholders;
  - To deter others from considering similar misconduct;
  - To maintain the integrity of and respect for FEI officials; and
  - To maintain the integrity of and respect for the FEI Rules and Regulations.
107. As to the **general principles in relation to sanction**, the Respondent argues that one should look first and foremost at the seriousness of the conduct both in terms of degree of culpability and in terms of the harm caused or risked by that wrongdoing which principle is enshrined in Article 169.1 of the FEI GR. The Appellant's conduct was entirely knowing and deliberate. It certainly affected the dignity and integrity of the FEI officials at the event, involving the repeated and aggressive shouting and assertion of various insults and abuse and creating increased risk of harm to the horses present in the VG, as the FEI Tribunal rightly found. Not only was the Appellant a senior national official, but also a senior FEI official and as such he was supposed to be a role model. Giving the seriousness of his misconduct and the aggravating factors, the maximum suspension available was a proportionate sanction to accomplish all the penalty goals.
108. As to the Appellant's argument that the FEI Tribunal did not take into account any mitigating factors, which if taken properly into account would not lead to the maximum suspension, the Respondent argues that the FEI Tribunal took into account that this was a first offence and the circumstances at the event as mitigating factors, as clearly reasoned in the FEI Tribunal's decision. However, the seriousness of the misconduct in combination with additional aggravating factors are such that the effect of any mitigating factors is entirely wiped out.
109. Regarding the alleged **unequal treatment** in the imposition of sanctions by the FEI Tribunal if **FEI Tribunal jurisprudence** is taken into account, the Respondent argues that, in practise, the sanction imposed in a particular case will depend very much on the particular facts and circumstances of that case, the analysis of which may not be clear from the available reports.
110. However, the 12-month or higher suspension has been imposed in similar cases such as in:
- *FEI v. Wilson* and *FEI v. Jogina*, FEI Tribunal Decision dated 26 April 2018, 2-year suspension; and

- *FEI v. Sommerseth*, FEI Tribunal Decision dated 10 April 2016, 2-year suspension.

Whereas the cases cited by the Appellant were cases disputing an automatic 2-month suspension and were found inadmissible (*Gaudriot v. FEI* and *Freire v. FEI*) or they were horse abuse cases (*FEI v. Khairi* and *FEI v. Thornton*) which are different in nature. Therefore, it cannot be said that the sanctions imposed on the Appellant are inconsistent with the previous FEI Tribunal jurisprudence.

111. Regarding the Appellant's argument that he has been treated differently from others who misbehaved at the WEG 2018, and that he has unfairly been singled out (e.g. Mr. Crooke reported that he was punched but no other disciplinary proceedings followed), every case is fact specific. The FEI conducted significant investigations of the conduct of various participants. It will exercise its prosecutorial discretion using a multi-factorial approach involving a high degree of judgment, keeping in mind the likelihood of the success on the merits and the interests of the sport. In support of its arguments, the Respondent submitted the email of Mr. Crooke, the person (besides Mr. Allegret) at whom the Appellant directed his words in the VG (and whom the Appellant had originally indicated he would call as a witness).
112. Regarding the Appellant's **request to be reinstated** to the FEI Endurance Committee, the Respondent submits that even if CAS finds that the Appellant is not liable for any breach of the FEI's Rules and therefore no suspension should be imposed, the Appellant's request should not be granted because:
  - (i) The decision to relieve the Appellant of his duties on the FEI Endurance Committee constitutes a decision within the meaning of Article 165 of the FEI GR, against which the appeal can be lodged within 30 days of notification of the decision. Since the Appellant did not lodge the appeal in the prescribed deadline, this prayer for relief is inadmissible;
  - (ii) The Appellant has no legal right to sit on the Endurance Committee since the members of the technical committees are not elected but rather appointed by the FEI Board and removed by the Board pursuant to the Articles 31.1, 31.6 and 31.10 of the FEI Statutes, Article 6.1. of the Internal Regulations and Article 31.12 of the FEI Statutes;
  - (iii) Since the Endurance Committee is currently not operating, this request is moot. It has been replaced by the Temporarily Technical Committee appointed to assess the issues currently affecting the discipline of endurance.
113. **In short, the Respondent argued:**
  - (i) whether the Appellant's behaviour is treated as four distinct violations or one course of action, it clearly constitutes "*incorrect behaviour*" of the most serious kind;
  - (ii) a one-year suspension is not disproportionate, nor is it inconsistent with the previous jurisprudence of the FEI Tribunal; the FEI Tribunal expressly addressed the mitigating factors but found that they were outweighed by the seriousness of the Appellant's misconduct, including its various aggravating factors;
  - (iii) the Appellant has not been treated unequally or unfairly by the Respondent;

- (iv) even if the above is wrong, there is no basis to reinstate the Appellant to the Endurance Committee – the appeal on this issue is time barred, he has no legal right to sit in it and the Committee is not presently functioning.

114. Considering the above, the Respondent submits the following **prayers for relief** in the Request for Arbitration:

*“For all the foregoing reasons, the FEI respectfully asks the CAS Panel:*

- 1. To dismiss the appeal against the FEI Tribunal’s decision dated 25 February 2019 in its entirety; and*
- 2. To order the Appellant to pay the arbitration costs, as well as a contribution towards the FEI’s legal fees and other expenses incurred in connection with these proceedings, in accordance with CAS Code Article R64.5.”*

## V. JURISDICTION

115. A valid arbitration agreement is the basis of the arbitration procedure and jurisdiction of the arbitral tribunal in general, and the legal basis for the jurisdiction and procedure before the CAS. Since the seat of the CAS is in Lausanne, Switzerland, Swiss arbitration law is *lex arbitri* for the present matter. In that respect, the Swiss Federal Statute on Private International Law (“PILA”), particularly its Chapter 12, applies.

116. Pursuant to Article 178 of the PILA, for an arbitration agreement to be valid, it must be made in writing by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text. According to the PILA, the written form of the arbitration agreement is required for the jurisdiction of the arbitral tribunal with its seat in Switzerland.

117. Pursuant to Article 186 of the PILA, the arbitral tribunal shall itself decide on its jurisdiction.

118. The Appellant, being a senior official in national equestrian association taking part in the international competition (WEG 2018) organized under the Respondent’s Rules but being also a senior FEI official, all in the vertical hierarchy and under the umbrella of the FEI Rules, accepted to be bound by the FEI Statute and incorporated applicable FEI Regulations.

119. By accepting to be bound by the rules incorporating the arbitration clause in favour of the CAS, the Parties entered into a valid arbitration agreement pursuant to Chapter 12 of the PILA.

120. The jurisdiction of CAS, which is not disputed by the Parties, derives from the Article 165.1.3. of the FEI GR, which provides:

*“An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):*

*With the CAS against the Decision by the FEI Tribunal. The person or body lodging such Appeal shall inform the Secretary General and provide him with copies of the statement of appeal.”*

121. Furthermore, Article R47 of the CAS Code provides:

*“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.”*

122. In accordance with the foregoing, the Panel confirms that CAS has jurisdiction to decide this procedure.

## **VI. ADMISSIBILITY**

123. Article R49 of the CAS Code provides the following:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*

124. The Panel observes that Article 165 of the FEI GR provides the following:

*“1. An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):*

...

*1.3 With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the Secretary General and provide him with copies of the statement of Appeal.*

...

*6.1 Appeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant to the Procedural Rules of the CAS Code of Sports-related Arbitration:*

*6.2 So as to reach the CAS within twenty-one (21) days of the date on which the Secretary General's notification of the FEI Tribunal Decision was received by the National Federation of the Person Responsible.”*

125. The FEI Tribunal decision is dated 25 February 2019 and the Statement of Appeal was filed with CAS on 15 March 2019.

126. The Respondent did not contest the admissibility of the Statement of Appeal.

127. Based on the foregoing, the Panel considers that the Appeal is admissible.

**VII. APPLICABLE LAW**

128. Article 187 paragraph 1 of the PILA (in its English translation) states as follows:

*“The arbitral tribunal shall decide the case according to the rules of law chosen by the parties or in the absence thereof, according to the rules of law with which the case has the closest connection.”*

129. The Parties submitted their dispute to be resolved by the CAS. Article R27 of the CAS Code provided the following:

*“R27 Application of the Rules*

*These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).*

*Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport.”*

130. The Appellant submits that pursuant to Article R58 of the CAS Code, CAS shall primarily apply the applicable FEI Regulations and on a subsidiary basis that Swiss law will be applicable in this case.

131. The Respondent submits that for the purposes of Article R58 of the CAS Code, the “applicable regulations” on this appeal are the FEI Statutes, which incorporates the FEI GR and that Swiss law applies subsidiarily.

132. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

133. The Appellant’s action took place on the premises and as part of the WEG 2018 event, which was organized by the Respondent and governed by the FEI Statutes and the applicable rules deriving from the FEI Statutes, such as the FEI GR.

134. At the “Introduction”, Article 100 of the FEI GR provides:

*“1. The General Regulations (GRs) are established so that individual Athletes and teams of Athletes from different National Federations (NFs) may compete*

*against each other under fair and equal conditions with the welfare of Horse as paramount.*

*2. The GRs and Sport Rules govern the conduct of all International Equestrian Events organised by NFs or by or on behalf of the Fédération Equestre Internationale (FEI).*

*[...]*

*6. FEI Statutes, GRs, and Sport Rules apply to International Events and/or Competitions as set forth in Chapter 1.”*

135. Based on the above, and considering that the applicable law is not in dispute, the applicable law to the merits in this arbitration are the **FEI GR** and subsidiarily Swiss Law.

### **VIII. MERITS**

136. In resolving the present legal matter, the Panel first identified which facts are disputed by the Parties, and which are material; then the Panel, by analysing the relevant documentation and exhibits, established the material factual findings and then applied the applicable law thereto with the aim of resolving the main issues in the present case.
137. There is **no dispute** between the Parties about: (i) the quality of the WEG 2018 organization; (ii) what happened the day of the race before it was finally cancelled and what were the circumstances that lead to its final cancellation; nor about (iii) the Appellant's expertise, character and behaviour during the WEG 2018 before the race was cancelled.
138. The **core of the dispute** between the Parties is: (i) the factual findings of the events taking place at the VG after the race was cancelled and what the Appellant said/shouted/did – in summary, how the Appellant actually behaved; (ii) whether the Appellant's behaviour was understandable considering the circumstances or whether it constituted prohibited action subject to the disciplinary proceedings; (iii) whether the Appellant was treated unequally or unfairly by the Respondent or the FEI Tribunal; (iv) whether the sanctions imposed by the FEI Tribunal were proportionate; and (v) whether there is a legal basis to reinstate the Appellant to the Endurance Committee.
139. Having in mind the core of the disputed issues between the Parties, the Panel is of the view that all could be summarized with the identification of the main factual and legal issues that are to be resolved by the Panel.
140. **The main issues to be resolved by the Panel are:**
1. What did the Appellant do (and how did he do it) after the race was cancelled?
  2. Does the Appellant's behaviour violate Article 169.6.3. of the FEI GR?
  3. In case the Appellant's behaviour violates Article 169.6.3. of the FEI GR, what is the appropriate sanction?



## 1. What did the Appellant do after the race was cancelled?

### a. The position of the Parties

#### a.1. Appellant's position

141. The Appellant submits that when the race was cancelled, he was still on the track supporting his team. He drove back to the VG to prevent the cancellation as he considered it to be unfair. People shouted, cried and protested, some people broke down to the VG, some were even physically violent so the police were called for assistance and some got arrested.
142. When he arrived at the VG, he encountered first the President of the Ground Jury trying to prevent such a chaotic and unfair outcome by convincing the concerned FEI officials to change their decision. He was very emotional but not even remotely aggressive or violent, nor did he act inappropriately in any other respect.
- He was simply frustrated and voiced his disagreement and disappointment:
    - *"We did all that for nothing! Years and years of working"*;
    - *"It's not fair. It's wrong totally"*; and
    - *"Now that we are winning, boom, out... You have been wrong the whole day, just as you have been wrong all these days"*.
  - When he said:
    - *"the riders will kill you!"* it was merely a figure of speech;
    - *"are you stupid or what!?"* he used a translation of the Spanish colloquial expression *"eres tonto or que"*; and
    - *"you are a cheater"* he meant *"estais hacienda trampas, teneis que arregarlo"*- meaning: *"you are cheating, you have to fix this"*.
  - He was not present at the VG when the race was cancelled and people started to shout, scream and kick against the fence. When he arrived later, he expressed his emotions towards the President of the Ground Jury saying: *"How can you cancel the race? How can you cancel the race now?"*;
  - By the time certain individuals entered the VG, the Appellant had already left the scene. Only later did the Appellant come back to the fence and waved to his two assistances who were outside the restricted area.
143. His behaviour took place within a time frame of approximately six minutes only and was one continuous action as a frustrated reaction to the whole WEG 2018 event. The second cancellation of the race at the end was a culmination, when despite all that happened the Spanish team was winning.

#### a.2. Respondent's position

144. The Respondent submitted that the Appellant's behaviour is clearly seen from the video footage demonstrating how the Appellant:

- hurled verbal abuse at the FEI Officials, saying “*You crazy*”, and “*Are you stupid or what?*”, and telling them menacingly: “*The riders will kill you. The riders will find you. The riders will travel on the horse. They will kill you*”.
- accused the FEI Officials of deliberately cheating the Spanish team, saying “*you are a cheater*” and “*we are leading and you do not want us to win*”.
- incited the crowd of spectators to enter the restricted VG area, repeatedly yelling “*come on!*” and gesticulating to them to breach the perimeter fencing and enter the restricted area, even though horses that had been competing were present there and undergoing medical inspections. He thereby not only increased the pressure on the FEI officials, but also put the horses and those attending them in the VG area at risk of harm.
- subsequently ran over to the crowd and repeated that encouragement after (i) a perimeter fence had been pulled down by the angry crowd, and (ii) a steward had warned that there were horses requiring care in the VG area. At least one competitor was reduced to tears at this “*football hooligan*” behaviour encouraged by the Appellant.

**b. The evidence on record**

145. The evidence on record is comprised of the video footage of the disputed event at the VG, the documentary evidence submitted by the Parties, the witness statements submitted in the proceedings before CAS, and the testimonies given by the witnesses and the Appellant during the hearing.

146. The video footage shows:

- The meeting of the Chefs d’Equipe gathered in a tent after the race was cancelled for the first time because some riders were misdirected to the wrong starting place. At this meeting, there were many people present, including the FEI Secretary General Ms. Sabrina Ibañez, the President of the Ground Jury, Mr. Allegret, and the Appellant; people are upset but calm, arguing among each other; no clear words can be recognized save for the comments of the person filming with the phone camera and saying that everything was bad the whole morning; the decision was made to re-start the race. Ms. Ibañez was explaining that the FEI Rules allow this decision to be taken with the aim that everybody has the same opportunities. People protested, one unidentified man can be heard saying “*you have been pushing for more than 40 kilos, and now you want me to come back now and start again!*”. There was a woman present, unidentified, with the Chef d’Equipe marking, who enquires how the race will be restarted – would the horses that have done an extra 50 kilometres be given the 50 km allowance or would the horses that have not done the extra 50 km be obliged to do those extra 50 km. The filmmaker is explaining that there was never the rule permitting the re-start of the race in the circumstances-at-hand; Mrs. Ibañez is saying: “*I am afraid that the decision is being taken and this is what is going to happen.*”
- At the VG, there is an announcement of the final cancellation on the loud speaker. People are starting to whistle and shout. The camera is approaching the Appellant who is having an argument with a Ground Jury member, very emotional and shouting: “*How can you cancel the race! How can you cancel the race now? We are winning, you are a cheater, come on!*” and then turning back to the people

shouting and whistling, shouts “*come on, come on, come on*”, lifting his arms from his hip up in the air, from his sides.

- The camera shows the people protesting, very loudly and angrily, with physical commotion, with one of them entering the VG but without the Appellant present at that time.
- At one point the Appellant runs to the perimeter fence with some words addressing somebody, but the details cannot be seen or heard from the video footage.
- The Appellant is arguing with the Ground Jury President, and addressing him with the following words: “*Are you stupid or what?*”
- The background of shouting, protesting and whistling continues, and then the Appellant is heard addressing the Ground Jury President with the following words: “*The riders will kill you! The riders will find you! The riders will come on the horse and kill you*”.
- One man can be seen loudly crying and saying “*I don’t expect that! I don’t expect that! It is not fair*”.
- The Appellant is saying to the Ground Jury President: “*This is not fair! We did all that for nothing! Years and years of working! This is not the reason!*”
- The Appellant is turning his back to the Ground Jury Member and two French team members are continuing the loud argument with the Ground Jury President;
- The Appellant is seen dressing up in another official bib on the top of the one already put on.
- The people continue to protest very loudly; some people enter the VG on the horses and others are applauding.
- The police arresting unidentified person(s).
- People protesting unanimously shouting: “*Shame on you! Shame on you*” when the recording stops.

147. Mr. Carillo, an FEI official, testified that he was present at the VG after the race was cancelled: he saw the Appellant arguing with the Ground Jury President, and that he was very emotional and nervous but not aggressive or insulting anybody. The moment the race was cancelled everybody lost their temper, so the Appellant’s reaction was normal to him. Only words he heard the Appellant saying were: “*they will find you, they will kill you*”. About the manner in which the Appellant addressed the crowd, Mr. Carillo testified that the Appellant was gesticulating with his hands from behind forward.
148. Mr. Uriarte, also an FEI official, testified that he was present at the VG after the race was cancelled, when the situation at the VG was abnormal. He explained that he was even punched by a French team member and fell, which he reported to the FEI. He saw the Appellant arguing with the Ground Jury President but did not hear the words. The Appellant was very nervous and excited but never threatened or insulted anybody. When addressing the crowd with his hands, according to Mr. Uriarte, the Appellant was gesticulating with his hands no differently than other people and trying to seek support for the protest and to reverse the cancellation decision.
149. The Appellant testified that after the years of preparation and investment, the WEG 2018 was a big frustration. After everything that happened during the WEG 2018 days, the race day was very disappointing and ended up with the second race cancellation and total shock for everyone. He was against the re-start from the beginning because it was against the rules of the discipline itself, which requires specific form and tactics in line

with a marathon. It means that you cannot start and stop, rest and re-start again with the same effect. But after putting up peacefully with all the decisions that the FEI had taken during the WEG 2018, he lost his temper in an emotional way. The Appellant explained that English is not his mother tongue and that he was only trying to save the situation. Every word he said was the translation from Spanish, but never insulting nor aggressive. He never meant that Ground Jury President was a cheater but instead what he meant was: *“You are wrong, you need to fix this, it is not fair”*. He was trying to provoke any reaction, but there was no reaction whatsoever which was even more frustrating. In that direction:

- When saying *“We are winning and you do not want us to win”*, he meant: *“You have to fix the situation, you have to find a solution”* – not that somebody was corrupt since he knew the person being addressed for a very long time;
- When waving to the crowd: it was emotional reaction, he yelled *“Come on!”* to the Ground Jury member to change the decision and then continued to do so turning back to the other direction. He never invited anybody to enter the VG, he was only trying to change the decision;
- When approaching the perimeter fence the second time, he was trying to find his assistants who had his correct bib, because he had the wrong one with the number 38 on which can be seen from the video;
- When saying *“they will kill you”* it was a translation from *“te va a matar”* as *“they will go mad”*;
- Every reaction was a reaction not only to the cancellation of the race but to the whole WEG 2018 event. He had warned the FEI about the troubles upfront and from the beginning – from the Test Event in April onwards, until the last day that ended up with the race cancellation at the point his team was winning;
- He reacted as a Chef d’Equipe, not an FEI official at the time: he was never aggressive but in total shock, emotional, worried, talking to a friend but receiving no reaction at all.

150. Ms. Sabrina Ibañez, the FEI Secretary-General, testified that she has no direct insight as to the events at the VG. When asked directly by the Panel, she confirmed that the Respondent was aware of the challenges confronting the event but that the policy of the Respondent was to organize the WEG 2018 at all costs because of the sponsors. Also, that she, as the Secretary General, when she saw the video online, initiated the disciplinary proceedings against the Appellant since his breach of the rules was the most evident one. When asked directly by the Panel, why the Respondent did not initiate proceedings against the reported incidents of physical assault, she answered that the Respondent was waiting for the outcome of the present proceeding so as not to waste anybody’s time and money.

151. Mr. Antonio Carlos Pinto Farrim, the Portuguese Veterinarian, who was present at the WEG 2018 as a member of the VET Commission at Tryon and a member of the FEI, *via* his witness statement and as a witness at the hearing, described the pre-events as chaotic. In relation to the post-cancellation events at the VET Gate, where he was present, he described that the Appellant at this point started to protest against the cancellation decision which he did in an emotional way, for the reasons which could be related to the bad organization of the event, but only showed some kind of despair trying to protest and change the decision. He heard the Appellant addressing the member of the jury with the words: *“If the riders on the loop know that you are cancelling the race*

*they will kill you*” but this phrase should not be taken out of the idiomatic context since in Portuguese or Spanish it does not have the meaning of the death threat but is a merely a figure of speech. He did not see the Appellant making any direct insult or physical aggression to anybody, nor was he a problem for the safety of people or horses present at the VG.

152. Mr. Anton Paul Bray, who was present at the WEG 2018 in association with one of the national teams, *via* his witness statement, besides describing the Appellant’s good character and the WEG 2018 as a disaster, described how, after the race was cancelled, there were people riding horses at the VG, very angry and shouting. The Appellant was the only one of the many who shouted, but he did not incite others to act strongly or increase tensions. He distressed a number of people but he had reason to be upset because he was responsible for his team, which had the leading positions.
153. Mr. Tom MacGuinness, *inter alia* a rider in the WEG 2018, *via* his witness statement, besides describing the Appellant’s good character and the WEG 2018 as a disaster, described how, after the race was cancelled, there were people shouting and in tears. There were people much more vocal and abusive than the Appellant, who acted in the context of the errors, incompetence and arrogance of the FEI.
154. Ms. Elvira Leyre Landa Moyano, an FEI official, *via* her witness statement, besides describing the Appellant’s good character and the WEG 2018 as chaos, described how, after the race was cancelled, there were angry people, surrounding the VG, shouting and crying. When the people entered the protected VG, the Appellant was not present.
155. Mr. Bernat Casals Fores, the Slovakian Assistant Chef d’Equipe, *via* his witness statement, besides describing the Appellant’s good character and the WEG 2018 as chaos, stated that, after the race was cancelled, the Appellant at all times never threatened anybody.
156. Dr. Elke Peperkorn, an Team Vet on the WEG 2018 Irish Team, *via* his witness statement, besides describing the Appellant’s good character and the WEG 2018, described how, after the race was cancelled, there were people worried and frustrated with the chaos happening. He was present at the VG after the race was cancelled and witnessed the events from up-close – the Appellant only expressed what everybody felt.
157. Mr. Alex Luque Moral, a rider on the WEG 2018 Spanish team, *via* his witness statement, besides describing the Appellant’s good character and the WEG 2018 as chaos, described how, after the race was cancelled, the Appellant only expressed everyone’s frustration but was not aggressive.
158. Mr. Jean Philippe Frances, a member of the French Team, *via* his witness statement, besides describing the Appellant’s good character, described how, after the race was cancelled, the Appellant never behaved violently or aggressively, only expressing his dissatisfaction with what was happening.
159. Mr. Jean Michael Grimal, a member of the WEG 2018 French Team, *via* his witness statement, besides describing the Appellant’s good character and the WEG 2018 as the “*lack of respect for the competitors and the horses, nothing was at the level of the world championship*”, stated that, after the race was cancelled, the Appellant’s reaction was understandable, but never dangerous or aggressive.

160. Mr. Jaume Puntí Dachs, a Spanish endurance rider, trainer and owner of endurance horses, *via* his witness statement *inter alia* decried the WEG 2018 as a very badly organized event. The Panel has decided not to summarize the rest of his statement since it relates to undisputed facts.
161. Dott. Fabrizio Pochesci, the Team Vet of the Spanish WEG 2018 team, *via* his witness statement, besides describing the Appellant's good character and the organization of the WEG 2018 (terrible conditions for horses, about sanitary conditions, lack of ventilation etc.), described how, after the race was cancelled, there was an atmosphere of general astonishment. He was at the VG in the company of the Appellant, who tried to protect the interests of his team in a vocal way but never in an inappropriate manner.
162. Dott. Angelo Paris, a member of the Italian WEG 2018 team, *via* his witness statement, besides stating that at the WEG 2018 the Respondent had forgotten the word "*welfare*" and describing the day of the race as chaos, described also how, after the race was cancelled, the Appellant spoke in a decisive but not offensive way to persuade the Ground Jury to revise the cancellation decision with the attitude of a true horsemen and professional of the sector.
163. Ms. Avril Joan Bray, a member of the WEG 2018 Irish Team, *via* her witness statement, besides describing the Appellant's good character whose primary concern was always the horses, and the WEG 2018 as chaos with no food, water or fresh air, described how, after the race was cancelled, the Appellant shouted but that such only reflected his extreme frustration and disappointment with the whole event at the time when he was under huge pressure because of the responsibility for the Spanish team's horses and the riders.

**c. The Panel's findings**

164. Before turning to the Panel's findings, the Panel first must establish the burden and standard of proof.
165. Burden and standard of proof are only stipulated for establishing the violation, not the facts, and are stipulated by Article 3.3. of Appendix G of the FEI GR, which reads as follows:

*"3.3. Burden and standard of proof*

*The FEI shall have the burden of establishing that a violation has been committed. The standard of proof in all matters under this Code shall be the balance of probabilities, a standard that implies that on the preponderance of the evidence it is more likely than not that a breach of this Code has occurred."*  
(emphasis added)

166. Even if Article 3.3. of the FEI GR provides the standard and burden of proof for establishing that certain behaviour – the fact is a breach of the rules (which will be addressed by the Panel at point 3) –, the Panel is of the view that having in mind the stipulation stated, when deciding if a certain fact exists, the Panel will decide it having in mind the burden of proof of the Party who claims the fact, and the standard of proof will be, in line with the Article 3.3., the balance of probability.

167. After having examined all the evidence on record, including the video footage – the authenticity of which was not contested by the Appellant –, the documentary evidence submitted by the Parties, the witness statements submitted in the proceedings before CAS, and the testimonies given by the witnesses and the Appellant during the hearing, the Panel finds that the following facts have been established in respect of the Appellants behaviour at the VG area after the race was cancelled.
168. After the final cancellation of the race, with people whistling and shouting in the background, the Appellant entered the VG visibly very emotional and frustrated. During the fracas, the Appellant yelled, in English, on two separate occasions at the Ground Jury President (saying *inter alia* that “*The riders will kill you*”, “*are you stupid or what*” and “*we are leading and you do not want us to win*”). In addition, during an argument with a different member of the Ground Jury, the Appellant emotionally shouted: “*How can you cancel the race! How can you cancel the race now? We are winning, you are a cheater, come on!*” and in the same manner turned back to the people behind the perimeter continued to shout, “*come on, come on, come on*” lifting his arms from his hip up in the air, from the side.
169. The Panel is of the view that the Appellant was not inviting the crowd to enter the VG but was continuously protesting and seeking the support for his protest from the people outside the VG. This view is substantiated by the witness testimonies and the way in which the Appellant raised his arms from the side, like cheering, and not moving his arms from the front to his direction as pointing the proposed way somebody should move. The burden of proof to prove that the Appellant was inviting people to come in to the VG was on the Respondent, who adduced no evidence save for the video footage. Precisely from that video footage, the Panel established that, even though the Appellant shouted the words “*Come on, come on*”, he first shouted them to the Ground Jury President and immediately, with the continuation of shouting “*Come on*”, turned to another direction. He was not pointing the direction for coming in but was raising his arms in the air.
170. The Appellant did run to the perimeter fence again. The Panel is of the view that the purpose of that run is to reach for his bib. Since it cannot be seen/heard from the video what he said or did at that moment, having in mind the burden of proof that lies with the Respondent, there is no evidence from the record showing that he invited somebody to enter the VG even at that point. It is more probable that he in fact reached for his bib, as was the Appellant’s explanation, since a bit later it can be seen from the video that the Appellant is dressing another bib on the top of the one already put on.
171. The Appellant did argue again with the Ground Jury President, and addressed him with the following words: “*Are you stupid or what?*”
172. With the background of people shouting, protesting and whistling, the Appellant addressed the Ground Jury President with the following words: “*The riders will kill you! The riders will find you! The riders will come on the horse and kill you. This is not fair! We did all that for nothing! Years and years of working! This is not the reason!*”
173. After emotionally walking around, the Appellant turned his back to the Ground Jury Member, and two French team members continued the loud argument with the Ground Jury President.

174. Notwithstanding that the video footage demonstrated the established behaviour of the Appellant and video footage only focuses on the Appellant and his action, it is undisputed however that it happened in the environment of people also strongly reacting to the cancellation in a way that some people screamed, shouted, cried, rode on the horses, protested in a crowd, broke down the perimeter fence, argued and at least one individual was physically attacked, which all resulted with police intervention.
175. Even though the Panel does not consider it to be a material fact, since it is a matter of dispute between the Parties, the Panel will address the question of whether the Appellant's behaviour is one continuous action or several different ones.
176. The Panel is of the view that the Appellant's behaviour is one continuous action, precisely one reaction, demonstrated in verbal way accompanied by body language. This is substantiated with the video footage showing the Appellant's behaviour in the VG in the course of several minutes, all with the same reason (as a reaction) and the same aim (to reverse the decision).

## **2. Does the Appellant's behaviour violate Article 169.6.3. of the FEI GR?**

### **a. The Parties' positions**

#### **a.1. Appellant's position**

177. The Appellant submits that his behaviour was a reaction to the fact that:
- His team invested a lot of effort during the years to be the best to its ability when performing at the WEG 2018, which only takes place every four years and are considered to be the Olympics of Endurance;
  - The Test Event in April 2018 already showed the future climatic challenges that the WEG 2018 was going to face, but even then, the Respondent decided to go forward because of the sponsors;
  - At the WEG 2018, the conditions were unacceptable both for the horses and the riders, but the Appellant was helpful to everybody;
  - As the Chef d'Equipe, the Appellant was highly responsible for his team;
  - After the false start, the first cancellation and the re-start, even though against such decisions, the team put all the effort possible to make the most of it. When the race was canceled for good, the Spanish team held the top position;
  - Everybody present considered his behaviour understandable, even the Ground Jury Members; nobody reacted, complained against or reported his behaviour at the VG as inappropriate, let alone as incorrect;
  - Considering all of the above, his behaviour was provoked by the circumstances at the WEG 2018; it was a reaction resulted from the accumulated stress, frustration and bad organization and it was understandable, not incorrect.
178. In summary, the Appellant is of the view that the incorrect behaviour cannot be established, considering the context in which the alleged incorrect behaviour was demonstrated and the reaction of the people present at the VG towards the situation and the Appellant's behaviour. In conclusion, the Appellant did not break any rule.



**a.2. Respondent's position**

179. The Respondent argues that there is no doubt that the Appellant engaged in incorrect behaviour. First, there is a nexus between the Appellant's behaviour when inviting the crowd to enter the VG and unidentified persons pulling down the perimeter fence and entering, which caused the danger for everyone present.
180. When saying "*the riders will kill you*", it does not matter if it is a figure of speech, it can constitute incorrect behaviour anyhow. Moreover, there is no proof of the linguistic differences.
181. The saying "*are you stupid or what*" must be interpreted objectively. It does not matter whether the persons know each other for years, it is objectively incorrect.
182. When shouting "*you are a cheater*" – even shouting *per se* constitutes incorrect behaviour – the Appellant's argument, that it is colloquial phrase, is not supported by any expert evidence.
183. Whether the persons behaved incorrectly must be measured objectively, from the perspective of an objective observer, but also subjectively measuring someone's behaviour with that person's duties.
184. Since the Appellant behaved in the opposite manner required of his duty, the Respondent is of the view that his behaviour was incorrect and the FEI Tribunal was right when it found, that given the Appellant's status and official roles at the national and international levels, he had:

*"a heightened duty to act appropriately with event officials and other competitors during the Event. [...] Being both a leader in the FEI Endurance Community and a veterinarian, he had a duty to enforce FEI Rules, to be respectful to other competitors and officials, and to maintain a safe environment for the horses competing in the Event". (FEI Tribunal Decision, para. 9.9)*

185. Contrary to that duty, the Appellant however:

*"9.13 [...] engaged in Incorrect Behaviour when he encouraged non-accredited members of the public to violate FEI regulations and enter the restricted vet check area by gesturing with his hand and repeatedly yelling 'Come On' to an already angry crowd.*

*9.14 The Tribunal notes in this respect that Competition horses were present in the vet check area when the decision to cancel the Competition was made. There was loud protesting and yelling by the spectator crowd surrounding the vet check area, which was creating a disturbance for the horses. The Tribunal finds that the Respondent intentionally turned towards the agitated crowd and signalled them both to increase their protesting and to enter the restricted area. The Tribunal finds that this was an intentional encouragement to violate FEI rules. Furthermore, the Respondent's actions increased the level of agitation of an already angry crowd.*

*9.15 The Tribunal therefore finds that it was Incorrect Behaviour to encourage non-accredited event members and the public to enter the vet check area where horses were being cared for. The Tribunal finds that this created an increased risk of harm to the horses presented in the vet check and was impeding the ability of support crew to care for them.*

[...]

*9.17 The Tribunal finds that the Respondent engaged in Incorrect Behaviour again when he encouraged non-accredited members and the public to enter the restricted vet check area a second time after the perimeter fence had been pulled down. The Respondent ran back to the perimeter fence and by gesturing with his hand and yelling to an already angry crowd, the Respondent encouraged entry into the restricted vet check area. Not only did this increase the risk of harm to FEI Officials but it put the welfare of the horses in the vet check at risk of harm. The steward had already warned everyone that there were horses requiring care, and the Respondent had a responsibility as a FEI veterinarian, a Chef d'Equipe and a Deputy Chair of the Endurance Committee to not only comply with FEI rules but to also make sure that the welfare of the Competition horses was safeguarded. The Respondent, however, failed to fulfil his responsibilities to comply with FEI rules and to help maintain a safe environment for the competitors and horses in the vet check area. The Respondent did exactly the opposite of what was required in this volatile and potentially dangerous situation.” (FEI Tribunal Decision, paras. 9.13-17)*

### **c. The Panel's findings**

186. From the Parties' submissions, there is a dispute as to what constitutes "*incorrect behaviour*" according to the applicable FEI Regulations. While the Appellant's view is that incorrect behaviour is behaviour that is not appropriate having in mind the circumstances of the case, the Respondent's view is that a person's behaviour must be measured against his/her duties and obligations, and if those duties and obligations were not complied with, the behaviour in breach of those duties constitutes incorrect behaviour in line with the Article 169.6.3. of the FEI GR.
187. As already stated, the applicable regulations in the present matter are the FEI GR, 23rd edition, 1 January 2009, updates effective 2019.
188. The burden and standard of proof are stipulated by Article 3.3. of Appendix G of the FEI GR, which reads as follows:
- “3.3. Burden and standard of proof*
- The FEI shall have the burden of establishing that a violation has been committed. The standard of proof in all matters under this Code shall be the balance of probabilities, a standard that implies that on the preponderance of the evidence it is more likely than not that a breach of this Code has occurred.”*
189. When establishing the breach of the rule, the Panel must first identify what is prescribed by that very rule.

190. The Appellant has been found to be in breach of Article 169.6.3. of the applicable FEI GR, which reads as follows:

*“Incorrect behaviour towards (a) Event Officials or any other party connected with the Event (other Athlete, journalist, public etc.) and/or (b) Doping Control Officers, Testing Veterinarian, Chaperones and/or any other person involved in the collection of a doping control sample may entail a fine of CHF 200.- to 10,000.- and/or a Suspension of a minimum of three (3) months up to a maximum of twelve (12) months”.*

191. The FEI GR do not define “*incorrect behaviour*”, but only mentions it in Article 169.6.3. of the FEI GR in connection to sanctions.

192. It is well established that a sport federation can impose a disciplinary sanction upon a person in breach of its rules and regulations which he/she is obliged to follow. But it is also well established that those rules and regulations must be of a certain quality to pass a legality and the predictability test. This means that the rule must be clearly stipulated in such a manner that a person can clearly predict the due behaviour and the consequence of its breach. For the disciplinary rules to meet this test, they should describe the act or omission which constitutes the disciplinary action later connected with the sanction (*Nulla poena sine lege, Nulla poena sine lege clara*). Otherwise they are to be interpreted against the party which proposed or drafted the rules (*contra preferentem*). In this way both the descriptive and normative, subjective and objective features of the disciplinary action are covered and there is no ambiguity as to what constitutes a certain disciplinary action.

193. Thus, it is necessary not only to stipulate a due behaviour but also that breach of the due behaviour shall be sanctioned. Putting it in another panel’s words:

- CAS 2014/A/3516, paras. 103-105:

*“It is well established that a sports governing body (‘SGB’) such as the WKF may impose disciplinary sanctions upon its members if they violate the applicable rules and regulations. The power ‘to impose such sanctions is based upon the freedom of associations to regulate their own affairs’ (advisory opinion CAS 205/C/976 & 986 FIFA and WADA Para 25).*

*It is, however axiomatic that before a person can be found guilty of a disciplinary offence, the relevant disciplinary code must proscribe the misconduct with which he is charged. Nulla poena sine lege. It is equally axiomatic for the relevant provision with which he is charged to be in breach first in accordance with the contra proferentem rule will be strictly construed. Nulla poena sine lege clara. (CAS 207/0/1381 RFEC and Valverde v. UCI Para 61 CAS 205/C/976 986 FIFA & WAD Para 126). It is not sufficient to identify a duty; it is necessary as well to stipulate that breach of such duty will attract disciplinary sanctions.*

*The Panel accepts that disciplinary provisions are not vulnerable to the application of that rule merely because they are broadly drawn. Generality and ambiguity are different concepts. The panel has little doubt that the WKF*

*sought, incumbently with other sports governing bodies, to draft a disciplinary provision of a reach capable of embracing the multifarious forms of behaviour considered unacceptable in the sport in question. The issue however for the Panel is not whether the WKF had such intention but whether, if it did, it achieved it.”*

➤ And CAS 2016/A/4921 & 4922, para. 62:

*“The Panel notes that according to Swiss association law and to Article 7 EHRC provisions of an association must meet the principle of nulla poena sine lege. The Panel agrees with the analysis of the Panel in CAS 2014/A/3516 (para. 104), and its statement, that it is axiomatic that ‘before a person can be found guilty of a disciplinary offence, the relevant disciplinary code must proscribe the misconduct with which he is charged. Nulla poena sine lege. It is equally axiomatic that the relevant provision with which he is charged to be in breach first in accordance with the contra proferentem rule will be strictly construed. Nulla poena sine lege clara (CAS 2007/O/1381 para 61; CAS 2005/C/976 & 986 para 126). It is not sufficient to identify a duty; it is necessary as well to stipulate that breach of such duty will attract disciplinary sanctions’”.*

194. The FEI GR only stipulate that incorrect behaviour shall attract the prescribed sanction, but do not describe the prohibited behaviour as such. However, only because the relevant provision is broadly drawn does not mean that this rule does not meet the legality and predictability test. Since the Parties dispute the meaning of allegedly breached rule, it is the Panel’s duty to define its meaning by the means of interpretation to reach the objectively right and satisfying decision.

195. As another panel (CAS 2013/A/3047, para. 71) has pointed out:

*“According to Swiss Law, there are four coequal methods of interpretation. They are the grammatical (seeks after the semantic meaning of the word or phrase), the systematical (seeks after the systematic position of an article in the legal texture of the greater whole), the historical (seeks after the original intention of the rule) and the teleological method (seeks after the spirit and purpose of the statute) of interpretation (KRAMER Ernst A., Juristische Methodenlehre, p. 57 ff., p. 85 ff.; 116 ff.; BGE 135 III 112 E. 3.3.2). While interpreting a statute, the judge has to seek for an objectively right and satisfying decision, taking account of the normative context and the ratio legis (BGE 135 III 112 E. 3.3.2). Thereby no interpretation method prevails over another. Rather, the judge has to choose those methodical arguments that allow approximating the ratio legis as close as possible (KRAMER Ernst A., Juristische Methodenlehre, p. 122).”*

196. *In casu*, the FEI GR connect the certain type of behaviour – the incorrect one – with the certain consequences/sanctions – the fine or/and a suspension. This logically means that if a person does not behave correctly, he/she is in a breach of a FEI GR.

197. In general, correct behaviour is a way of behaving when a person does what is morally right and avoids what is morally wrong. It follows that incorrect behaviour is just the opposite. Both Parties’ interpretations of incorrect behaviour (the Appellant’s being, to

act appropriately keeping in mind the context, and the Respondent's being a duty to act appropriately by enforcing the rules, to be respectful to others and to maintain the safe environment) are covered by the duty to do what is morally right.

198. In addition, the Panel considers that in assessing behaviour, it must also consider the role of the individual, which may have corresponding duties and obligations, and who may therefore be held to a higher standard of conduct.
199. In the present case, the Panel established that the Appellant's reaction was the reaction in the form of words and emotions. Being a part of the equestrian world and an FEI official, the Appellant is accustomed to working in English as one of the most utilised official languages in the business environment. In this respect, yelling words such as "*stupid*", "*cheater*", "*the riders will come on the horses, the riders will find you...*", do constitute a morally wrong action even if a figure of speech.
200. Also, the Panel found that the Appellant was not inviting the crowd to enter the VG, but rather was continuously protesting and automatically seeking the support for his protest from the people outside the VG. Even if he did invite the unauthorized people to enter the VG, this would not be "*incorrect behaviour*" towards the public connected with the event, as covered by the rule, because he would not have done anything incorrect towards those people – he would have done it towards the officials and everybody present at the VG by putting them at risk. Nonetheless even in the present case of established facts, when the Panel found that the Appellant was merely seeking support for his protest, the Panel is still of the view that such behavior is morally wrong, and thus incorrect.
201. The Panel notes in this regard that whether those actions were provoked, whether they were said in an emotionally intense situation under a high level of stress or whether in line with the reactions of other people present at the VG, is a matter of deciding the applicable sanction, not deciding whether the rule was breached.
202. In summary, the Panel finds that the Appellant has violated the rule stipulated by Article 169.6.3. of the FEI GR.

**3. In case the Appellant's behaviour violates Article 169.6.3. of the FEI GR, what is the appropriate sanction?**

**a. The Parties' positions**

**a.1. Appellant's position**

203. If he is found liable, the Appellant contends the Panel should overturn the sanctions imposed against him by the FEI Tribunal, including the one year exclusion from any FEI activities, for the following reasons:
- (i) The CAS has a full power of review the facts and the law (Article R57 of the CAS Code);
  - (ii) The FEI Tribunal failed to consider the mitigating circumstances. Had it done so, it could not have imposed the one year sanction, because that is the maximum sanction in the permissible range;

- (iii) The sanction is clearly disproportionate when compared to the sanctions issued against participants in other cases; and
- (iv) He has been treated unequally, because there were other participants engaged in misconduct at the WEG 2018, but only he has been the subject of disciplinary proceedings.

### a.2. Respondent's position

204. The Respondent argues that there is a strong line of CAS jurisprudence to the effect that, “*without fettering their powers [of de novo review] under Article R57 of the Code, respect is naturally placed on the reasoning [of] underlying decisions of expert and experienced regulators as to what sanctions are appropriate for a particular offence*” (CAS 2013/A/3324, para. 9.29), and therefore a CAS panel should only interfere with the sanction imposed by such disciplinary body when it is “*evidently and grossly disproportionate to the offence*” (CAS 2016/A/4501, para. 313).
205. The Appellant is correct that one recent CAS panel, anxious to defend its power to review decisions *de novo*, said that the clear body of CAS jurisprudence “*should be interpreted (and applied) with care*” (CAS 2018/A/5808, paras. 134-135).
206. However, he fails to point out that even that panel concluded its discussion of the point as follows: “*the Panel finds that its powers to review the facts and the law of the case are neither excluded nor limited. However, the Panel is mindful of the jurisprudence according to which a CAS panel would not easily “tinker” with a well-reasoned sanction, i.e. to substitute a sanction of 17 or 19 months’ suspension for one of 18. It would naturally [...] pay respect to a fully reasoned and well-evidenced decision of such a Tribunal in pursuit of a legitimate and explicit policy. However, the fact that it might not lightly interfere<sup>[FEI]</sup> with such a Tribunal’s decision, would not mean that there is in principle any inhibition on its power to do so (cf. CAS 2010/A/2283 para. 14.36; CAS 2011/A/2518 para. 15; CAS 2011/A/2645 para. 44)*”.
207. The Respondent argues that the FEI Tribunal is not only independent, but it is also specialized and experienced in equestrian sports, and therefore best-placed to judge what is necessary to preserve the health and strength and integrity of that sport. To that extent, with great respect to the CAS Panel, the Respondent submits that significant deference should be given to the FEI Tribunal's judgment on what is the appropriate sanction in this case, i.e., what is necessary to punish the Appellant, to protect other stakeholders, to deter others from considering similar misconduct, and to maintain the integrity of and respect for FEI officials and the FEI Rules and Regulations they are charged with applying.
208. As to general principles in relation to sanctions, it is the Respondent's view that a sanction must be proportionate; but proportionality does not just mean that the sanction must not go further than is necessary to punish, protect, deter, etc. It also means it must be effective, i.e., it must go as far as necessary to achieve those objectives. In both contexts, it is necessary to look first and foremost at the seriousness of the conduct, both in terms of the degree of culpability and in terms of the harm caused or risked by that wrongdoing. This principle is enshrined in Article 169.1 of the FEI GR, which states:

*“1. In deciding on the appropriate penalties to be imposed, the following factors shall be taken into consideration, together with any other relevant factors:*

*1.1. Whether the action or omission resulted in an unfair advantage to the offender or an Athlete.*

*1.2. Whether the action or omission resulted in a material disadvantage to any other person or body involved.*

*1.3. Whether the action or omission involved the maltreatment of Horses.*

*1.4. Whether the action or omission affected the dignity or integrity of any person involved in the sport.*

*1.5. Whether the action or omission involved fraud, violence or abuse or similar criminal acts.*

*1.6. Whether the action or omission was deemed to be deliberate.”*

209. In this respect, the Appellant's conduct was entirely intentional and deliberate (even if carried out in a red mist). It certainly affected the dignity and integrity of the FEI officials at the event, involving the repeated and aggressive shouting and assertion of various insults and abuse. In addition, and most egregiously, as the FEI Tribunal specifically found, by inciting the crowd to break past the perimeter and enter the VG area, the Appellant *“created an increased risk of harm to the horses presented in the vet check and was impeding the ability of support crew to care for them. ... [He] failed to fulfil his responsibilities to comply with FEI rules and to help maintain a safe environment for the competitors and horses in the vet check area. The Respondent did exactly the opposite of what was required in this volatile and potentially dangerous situation”*. And this is all greatly aggravated not only by the Appellant's total lack of contrition for and understanding of what he did, but also by the fact that the Appellant was not only a senior national official but also a senior FEI official, including being Deputy Chair of the FEI Endurance Committee. He was supposed to be a role model, showing everyone how to behave with dignity and calmness in tense and difficult circumstances, not losing his head and running around abusing officials and encouraging an already angry mob to intrude into the VG area.
210. Given the seriousness of the Appellant's misconduct and the aggravating factors present in his case, the FEI Tribunal was fully entitled to impose the maximum suspension available (all while expressly stating its view that that was a proportionate sanction). Such a sanction is necessary in the Appellant's case, not only to punish the Appellant's wrongdoing, but also to reflect the seriousness of the Appellant's conduct and to send a signal to all stakeholders in the sport that this sort of conduct is not acceptable and must be avoided at all costs, and thereby to maintain public and stakeholder confidence in the integrity of equestrian sport, its officials, and its rules and regulations.
211. As noted above, CAS jurisprudence suggests that significant deference should be given the judgment of the FEI Tribunal as to what is a proportionate sanction (because it has the most experience and expertise in relation to the needs of the sport) and that its decision should only be overturned if the sanction imposed is *“evidently and grossly disproportionate to the offence”*. By that standard, clearly there is no basis to disturb the FEI Tribunal's ruling; but even if the CAS Panel were to approach this issue *de novo*, the FEI respectfully submits that it should be quick to find a 12-month exclusion from FEI activities to be an appropriate and proportionate sanction. The FEI notes, *inter alia*, that that sanction does not stop the Appellant from carrying out veterinary and other activities at the national level during that 12-month period. However, it does

afford him a time-out from FEI activities that gives him the opportunity to understand what he did wrong, in the meantime protecting FEI officials from the risk of further abuse.

212. Regarding mitigating circumstances, the Appellant's submission that the FEI Tribunal did not take mitigating factors into account is plainly wrong. The FEI Tribunal's decision expressly states: "*The Tribunal has also taken into account that the Respondent is a first-time offender, as well as the circumstances at the Event*". Those are the only two mitigating factors in this case, and there is no basis to say they were given insufficient weight.
213. Also wrong is the Appellant's assertion that if the Appealed Decision had considered just one of all the mitigating circumstances, it could not have imposed the maximum sanction. It is not the case that the existence of a mitigating factor must automatically result in a reduction in sanction from any prescribed maximum. The seriousness of the offending conduct and the existence of sufficiently serious aggravating factors can be such that the effect of any mitigating factors is entirely wiped out.
214. In the Appellant's case, his very serious misconduct implicates at least three out of the six prescribed factors for the imposition of a sanction under Article 169.1 of the FEI GR. In addition, there are very significant additional aggravating factors, not least his various senior positions within equestrian sport, and his total lack of contrition.

## **b. The Panel's findings**

### **b.1. What is the applicable standard of review?**

215. The starting point for addressing the issue of applicable sanctions, according to the Panel, should be the standard of review according to Article R57 of the CAS Code.
216. According to the applicable procedural rule, i.e. Article R57 of the CAS Code, the CAS has a full power of review of the facts and the law in appeals procedures. The CAS jurisprudence cited by the Parties only explain how previous CAS panels exercised that right in certain circumstances and explained that, if a certain panel agreed with the tribunal's findings, it would not easily interfere with the imposed sanction of the well-reasoned award.
217. Accordingly, the view expressed in the well-known CAS award (*CAS 2013/A/3324* and *CAS 2016/A/4501*) was not that the panel had any power limitation, but that it will pay respect to the well-reasoned findings which it agrees with, and not easily replace the sanction with a similar one. The Panel's view in this regard is substantiated by further CAS jurisprudence:

➤ *CAS 2010/A/2283*, para. 14.36:

*"In that case the Panel in fact agreed with the Tribunal and, therefore, insofar as its observations can be read (which is highly debatable) as suggesting that some particular deference be given to the FEI Tribunal decision, they were obiter as unnecessary to the decision itself. The Panel would be prepared to accept that it would not easily 'tinker' with a well-reasoned sanction, ie to substitute a sanction of 17 or 19 months' suspension for one of 18. It would*



*naturally (as did the Panel in question) pay respect to a fully reasoned and well-evidenced decision of such a Tribunal in pursuit of a legitimate and explicit policy. However, the fact that it might not lightly interfere with such a Tribunal's decision, would not mean that there is in principle any inhibition on its power to do so."*

- As well as CAS 2017/A/5299, paras. 116-7:

*"Whether there are equally good reasons to limit the scope of review also in other instances, e.g. in disputes involving disciplinary sanctions (going beyond the field of play) appears questionable. CAS panels have frequently stated that '[t]he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence' (cf. CAS 2013/A/3139 para. 114; CAS 2012/A/2762 para. 122; CAS 2011/A/2645 para. 44 with numerous references therein). However, such general statements should be read (and applied) with care.*

*- First, the above restriction to the scope of review originates in Swiss law of associations and was developed in the context of a review of disciplinary measures by state courts (cf. BK-ZGB/RIEMER, 1990, Art. 75 no. 25). The reason for imposing restrictions on state courts when reviewing decisions of associations follows from the Swiss Constitution (Article 23), i.e. the autonomy of associations, which protects sports federations from excessive state interference. No such state interference is at stake in the present context, where a private institution (CAS) was mandated by private parties to resolve a dispute between them.*

*- Furthermore, according to Swiss law no limited review applies from the very outset to questions of law. Whether and to what extent a federation is bound by the principle of proportionality or the principle of equal treatment when exercising its disciplinary powers is, however, a question of law (cf. CAS 2013/A/3139, para. 86) and not an issue within the free discretion of a federation.*

*- The Panel further observes that UEFA provides for a two-instance internal proceeding (CEDB, UEFA Appeals Body). According thereto the UEFA Appeals Body can revise the first instance decision. According to the jurisprudence of the Appeals Body '[i]ts role ... essentially consists of examining whether the ... [CEDB], when taking its decision, respected the principles of legality, equal treatment and proportionality, whether it took into account the particular circumstances of the case and the seriousness of the offence, and finally, whether it exceeded or abused its discretionary powers' (cf. UEFA Appeals Body decision of 14 December 2012 in the matter SK Rapid Wien). There are no reasons of good administration of justice why CAS's mandate would be more restrictive than the UEFA Appeals Body's powers of review.*

*Finally, it appears rather arbitrary to try to draw a persuasive line between decisions that are 'simply' or 'grossly' disproportionate. Also, the constant jurisprudence of the CAS according to which procedural flaws committed by the*

*judicial organs of a federation 'fade to the periphery' in appeals proceedings before the CAS (CAS 98/211) would have to be revised, if CAS were prevented from exercising its full mandate in disciplinary proceedings, i.e. to review the facts and the law of the case (CAS 2012/A/2912, para. 87).*

*To conclude, the Panel finds that its powers to review the facts and the law of the case are neither excluded nor limited. However, the Panel is mindful of the jurisprudence according to which a CAS panel 'would not easily "tinker" with a well-reasoned sanction, ie to substitute a sanction of 17 or 19 months' suspension for one of 18. It would naturally [...] pay respect to a fully reasoned and well-evidenced decision of such a Tribunal in pursuit of a legitimate and explicit policy. However, the fact that it might not lightly interfere with such a Tribunal's decision, would not mean that there is in principle any inhibition on its power to do so'" (cf. CAS 2010/A/2283 para. 14.36; CAS 2011/A/2518 para. 15; CAS 2011/A/2645 para. 44).*

218. It follows from the CAS jurisprudence that when a CAS panel exercises its powers of *de novo* review, it will do it in a way that it will try to first establish whether the first instance body made similar findings and issued a full-reasoned and well-evidenced award which culminated with the imposition of a proportionate sanction.
219. First, in the present matter, the Panel does not entirely agree with the FEI Tribunal Decision's findings. The Panel considers that it has established in what way and using which words the Appellant addressed the Ground Jury members at the VG. But the Panel also established the context and the reasons of Appellant's reaction. In that regard:
- The Appellant's reaction was a reaction to the acts and omissions of the Respondent in connection with the whole WEG 2018 event – which were extreme, not a reaction only to the decision to finally cancel the race;
  - It does not follow from the evidence that the Appellant invited anybody to break down the perimeter fence, nor does it follow from the evidence that there is any nexus between the Appellant's behaviour and people putting at risk everybody present at the VG;
  - The Appellant's reaction is not an isolated one, but rather the video footage only focuses on the Appellant's behaviour; however, looking closely, there can be seen that there were very extreme reactions to the cancellation of the race by others surrounding the Appellant as well (crying, shouting, breaking down the perimeter fence, individuals being physically attacked);
  - Nobody present at the VG had any complaints or reported the Appellant's behaviour, which would logically follow if his reaction were isolated.
220. Second, the Panel considers that the FEI Tribunal Decision was not well-reasoned. Even if the FEI Tribunal's Decision says that the Tribunal took into account the only two mitigating circumstances it found ("*The Tribunal has also taken into account that the Respondent is a first-time offender, as well as the circumstances at the Event*"), the Decision lacks an explanation of the effect of such circumstances on the final sanction. It follows that such deficient reasoning is not the reasoning required according to the applicable rules. FEI GR Article 5 Appendix G stipulates:

*"5.1 Where it is determined that a violation has been committed, the FEI Tribunal shall impose an appropriate sanction upon the Participant from the range of permissible sanctions set out in Article 169 (Penalties) of the GRs and which may range from a minimum of a Warning to a maximum of life ban.*

*5.2. When determining the appropriate sanctions applicable, the FEI Tribunal shall take into consideration all aggravating and mitigating circumstances and shall detail the effect of such circumstances on the final sanction in the written decision."*

## **b.2. What is the proportionate sanction to be imposed?**

221. The Panel is of the view that the sanctions in general must be proportionate and have different functions: the punitive function serve to punish the offender; the preventive function prevents repeat offenses and the restorative function helps to remedy the harm inflicted by the offence.

222. As another CAS panel explained in *CAS 2017/A/5299*, paras. 137-8:

*"The principle of proportionality encompasses three aspects. According thereto the measure must be appropriate, necessary and demonstrate a reasonable balance between the objective pursued and the means used to achieve it (proportionality in its narrow sense).*

*Disciplinary measures serve different purposes. On the one hand, a sanction shall help to undo harm that has been inflicted by the offender. On the other hand and more importantly, a disciplinary sanction shall prevent re-offending by the offender. Consequently, harsher sanctions are warranted in case of serious infringements, structural non-compliance with the various obligations and in case of recidivism (cf. also *CAS 2015/A/3875*, para. 125 seq.)."*

### **i) The appropriate and necessary disciplinary sanction**

223. There can be no doubt nor was it a matter of dispute between the Parties that the circumstances of the WEG 2018 were extreme. There was not appropriate food or water for days, there was a lack of hygiene and fresh air, the horses could not be easily reached and the weather and climate conditions were extremely challenging. There was no dispute between the Parties and it follows from many witness statement that the Appellant was extremely helpful to other teams in those challenging conditions.

224. Furthermore, the Respondent's Secretary General admitted that the Respondent was warned in advance that something like this could happen, and at first there was no clear approval from the Respondent's relevant authority, but the FEI proceeded with the event because of the sponsors at all costs.

225. The Panel is of the view that the decision to cancel was a legitimate decision for the Respondent to make at the time when the decision was made but that the consequences of such decision were on the shoulders of all organisers. As that was not enough, the

day of the race was a complete chaos – competition started, was cancelled, re-started and cancelled again. Being the supreme authority of the equestrian world, the Respondent must have been aware what sporting consequences such decision would have for the athletes who invested years just to be able to participate and what the peculiar features of a certain discipline are – that it is not possible with the predicted conditions perform equally in a totally different environment.

226. Turning to the issue of sanctions, the FEI Tribunal sanctioned the Appellant with both a 12-month suspension and a fine.
227. The Panel is of the view that the Appellant's behaviour was a reaction to established extreme circumstances contributed to by the Respondent's acts, omissions and the final decisions. He was not affected alone; everybody present had strong reactions, which were displayed differently, but some even physically which is worse. There is no doubt that the Appellant crossed the line, but there is also no doubt that he was provoked. Having that in mind, in the view of the Panel, to punish only the Appellant, both with the longest possible suspension available and the additional fine, is not appropriate nor necessary.
228. The Panel also determines that the FEI was unable to explain to the Panel why the video adduced in these proceedings solely focused on the Appellant, whilst ignoring the dangerous violence that was going on behind the scenes involving other individuals. In addition, the FEI could not identify the person who shot the video, and neither could it explain how he gained access to the scene of the incident without official permission. The Panel understands that it is alleged that, in addition to the acts committed by the Appellant, there were other more serious and grave physical offences committed by or against other FEI officials during the event, but FEI did not, and has not, taken any action or charges on these officials and instead decided to take action only against the Appellant.
229. Further, the Panel would have expected FEI officials on the ground to first warn the Appellant of his conduct before taking other measures. In addition, no third party complained of the Appellant's conduct during the event. The FEI never explained or gave good reasons why this happened if it deemed the Appellant's conduct to be so serious.
230. The sanction of a suspension should also serve the above-mentioned functions: it needs to repair the damage and prevent the offender from re-offending. Since Ground Jury member Mr. Crooke was of the view that the Appellant's behaviour was a reaction to the accumulated frustration to the whole WEG 2018 organization as it follows from his email, the Panel finds that there is no proof whatsoever from the record that any damage was done by the Appellant's behaviour. The Respondent had a burden of proving the consequences of the offence but the Respondent did not adduce any evidence in that regard. With respect to the man that can be seen crying at the VG in the video, there is no evidence that his reaction was caused by the Appellant's behaviour, so that he was so heavily affected, or whether his reaction was the same as everyone else's – the reaction to the cancellation of the race.
231. Also, the Panel is of the view that the circumstances of the event were so exceptional, taking everything into account, that a prolonged suspension's aim of preventing the Appellant from committing a similar offence in similar circumstances is just not

possible. The Panel would be of a different view if the Appellant's reaction followed only from the sudden decision to cancel the race, without the undisputed history and the circumstances of the WEG 2018.

232. The Panel also finds that while the Appellant shouted the inappropriate words evidently in a fury, he was a first-time offender who never disobeyed any of his duties, and in fact he was extremely helpful to the whole community in extremely challenging conditions leading up to the cancellation of the race. Even though the words that he uttered are much criticised by the Panel, such verbal offence said in evident chaos can never be equated to physical offences, which evidently were carried out by someone else, which was reported but not prosecuted by the Respondent.
233. Furthermore, since the exceptional character and the veterinarian expertise were not challenged in the present dispute, it may be more useful for the equestrian world to have the Appellant involved as much as possible.
234. Notwithstanding the above considerations, the Panel also notes that at the time of the incident in question, the Appellant was a national and an FEI official, as well as a Chef d'Equipe. The Panel considers that a highly-ranked equestrian official whose actions must be a role model for others and whose duties were greater than a regular WEG participant, must therefore be held to a higher standard of conduct as the Panel found above in its discussion of Article 169.6.3. of the FEI GR.
235. This leads the Panel to assess the punitive function of the imposed sanctions.

**ii) The reasonably balanced disciplinary sanction**

236. The Appellant argues that, by imposing the maximum sanction in terms of a 12-month suspension and not considering the mitigating circumstances properly, the Respondent violated the principle of equal treatment. Compared to other people's behaviour at the VG, some of whom even physically assaulted FEI officials, he was still the only one against whom disciplinary proceedings were opened. Countless people expressed their anger towards FEI officials after the race was cancelled, and some were even arrested, but only the Appellant was unfairly singled out. Furthermore, compared to the jurisprudence of the FEI Tribunal in cases concerning incorrect behaviour, the sanctions ranging from 2- to 4-month suspensions were imposed, but in all the cases, prior to that sanctions on the field (a Yellow Card) were issued, which means that all the FEI officials involved considered the behaviour to be incorrect.
237. The Respondent argues that while the principle that "*like cases should be treated alike*" is simple to state, in practice the sanction imposed in a particular case will depend very much on the particular facts and circumstances of that case, the analysis of which may or may not be clear from the available reports. Misconduct cases are, by their nature, very fact-specific, and the FEI is not aware of any other cases that are on all fours with the facts of this case. However, a suspension of 12 months is certainly not out of kilter with other FEI Tribunal decisions that have addressed the misconduct of officials what can be seen from the cases like *FEI v. Wilson* and *FEI v. Jogina*, while the cases *FEI v. Khairi* and *FEI v. Thornton* are both horse-abuse cases, dealing with appeals of the automatic 2-month suspension, not concerning the misconduct of officials in any way, and so are of an entirely different nature than the Appellant's case. Therefore, it cannot be said that the sanction imposed on the Appellant is inconsistent with previous FEI

Tribunal jurisprudence. Rather, the sanction is consistent with those cases to which it bears some similarities, and certainly cannot be said to be “*evidently and grossly disproportionate*” when compared to other cases. Regarding unequal treatment, the Appellant's complaint that he has “*unfairly been singled out*”, even though others at the WEG 2018 also engaged in serious misconduct, was raised before, and rejected by, the FEI Tribunal. The fact that one person may escape punishment does not mean another should; but there is simply no basis here to say that anyone has wrongly escaped punishment.

238. Taking the Parties submissions into consideration, the Panel is of the view that, as already pointed out and as was conceded by the Respondent, the circumstances of the present case are so exceptional that they simply cannot be compared to any other case. There is simply no case cited where the background circumstances for which the Respondent is responsible and which contributed so significantly to the Appellant's reactions were so serious and were considered properly when a suspension was imposed.

239. Article 169 of the FEI GR reads as follows:

*“1. In deciding on the appropriate penalties to be imposed, the following factors shall be taken into consideration, together with any other relevant factors:*

*1.1. Whether the action or omission resulted in an unfair advantage to the offender or an Athlete.*

*1.2. Whether the action or omission resulted in a material disadvantage to any other person or body involved.*

*1.3. Whether the action or omission involved the maltreatment of Horses.*

*1.4. Whether the action or omission affected the dignity or integrity of any person involved in the sport.*

*1.5. Whether the action or omission involved fraud, violence or abuse or similar criminal acts.*

*1.6. Whether the action or omission was deemed to be deliberate.*

*2. An oral or written warning is appropriate in cases of minor violations committed unintentionally and without significant consequences.*

*3. A fine is appropriate particularly in cases where the offender has acted negligently.*

*[...]*

*5. A Provisional or Final Suspension, on such terms and subject to the conditions as the FEI Tribunal, or as the case may be, the FEI Secretary*

*General, may impose, is appropriate in cases of intention and very negligent violations. [...]"*

240. The Appellant's reaction did not result in an unfair advantage to the offender or an athlete (Article 169.1.1. of the FEI GR), did not result in a material disadvantage to any other person or body involved (Article 169.1.2. of the FEI GR), the Appellant's action or omission did not involve the maltreatment of horses (Article 169.1.3. of the FEI GR) nor did the action or omission involve fraud, violence or abuse or similar criminal acts (Article 169.1.4. of the FEI GR).

241. This leaves the Panel with the question of:

- whether the Appellant's reaction or omission affected the dignity or integrity of any person involved in the sport (Article 169.1.5. of the FEI GR);
- whether the action or omission was deemed to be deliberate (Article 169.1.6. of the FEI GR); or
- whether there are any other "relevant factors" to take into consideration (Article 169.1. of the FEI GR).

- **Did the Appellant's action or omission affect the dignity or integrity of any person involved in the sport?**

242. Whether the Appellant's action or omission affected the dignity or integrity of any person involved in the sport is the personal perspective of the potentially harmed person and is a matter of fact. This fact should be established considering the relevant burden of proof and it concerns the actual consequence of the offender's action. There is no proof on the record that the Appellant's action affected anybody – the persons to whom the incorrect words were addressed had no significant reaction at the time of the event, and they never subsequently complained about the Appellant's actions in any form even afterwards, when the potential shock passed. Just the opposite, as it follows from the evidence produced by the Respondent, Mr. Crooke, who was supposed to be one of the individuals insulted and whose dignity was supposed to be affected, when asked why he did not report the mentioned physical assault carried out against him by a third party, wrote an email stating:

*"Yes I was hit by an individual several times. I had words with the individual about their conduct. Some time later the individual came back and apologized to me. At a later stage when sanity was resorted I took it upon myself to accept this apology and not to continue the sorry mess that was the WEG Endurance Tryon by reporting it. My reporting it was likely to further tarnish the sport of Endurance. The reaction to the cancellation of the endurance competition was not just a reaction to the cancellation of the ride, but an explosion of the frustration that these people had suffered in the lead up to the competition. I accepted my assault as part of that frustration and not a malicious assault in the true sense of the word." (emphasis added)*

243. It follows from Mr. Crooke's email that he took the Appellant's action as a quarrel provoked by the frustration suffered by the whole event. This is the only evidence from the record regarding someone's dignity or harm. As it follows, Mr. Crooke himself even

seems to have taken the Appellant's reaction as nothing more than a reaction to the whole event and not something personal that affected his dignity or personally insulted him.

244. The Panel further notes that no witness testimony or other evidence was presented by the other FEI official at whom the Appellant directed his incorrect words, i.e. the Ground Jury President Mr. Allegret.

- **Was the Appellant's action or omission deemed to be deliberate (Article 169.1.6. of the FEI GR)?**

245. The Panel's view is that whether the Appellant's reaction or omissions were deemed to be deliberate in the present case would mean that they were done on purpose and calculated or at least that he knew or must have known he was creating a substantial risk of bodily harm. It is beyond dispute that the Appellant used incorrect language as an instant reaction without thinking anything through and as a part of an "*emotional explosion*". Even the Respondent conceded that the Appellant's reaction was done in the "*red mist*". The Respondent bore the burden of proof (Article 3.3. of the FEI GR) to establish that the Appellant's acts were deliberate by its very definition of the deliberated action.

246. The Appellant provided the explanation that his actions were an instant emotional reaction expressed verbally followed by a physical motion of lifting his arms in exasperation. That was also supported by the evidence from the record. By the very definition, a person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances. Taking all the mentioned evidence from the record into account, and regarding the required burden of proof (on the Respondent) and standard of proof (balance of probabilities), the Panel is persuaded that it is more probable than not that the Appellant acted negligently.

247. However, the Panel notes the level of negligence, whether the Appellant's action was only negligent or very negligent, will be considered below in the assessment of whether there were "*any other relevant factors*" that shall be taken into consideration (Article 169.1. of the FEI GR).

- **Are there "*any other relevant factors*" that shall be taken into consideration (Article 169.1. of the FEI GR)?**

248. The Panel notes that there are other "*relevant factors*" that it must take into consideration in the case-at-hand, especially the undisputed video evidence on the file.

249. In this regard, the Panel notes that the Appellant's reaction, however provoked, was directed at more than one FEI official, and was recorded by an unknown party and made available on the Internet where the public could observe it and where indeed it garnered significant attention. The Panel also observes that, in addition to shouting incorrect language at FEI officials, the Appellant brought into play allegations of unfair play on the part of the FEI, when accusing the FEI officials of cheating or deliberately sabotaging the Spanish team of which the Appellant was Chef d'Equipe. While the Panel notes that the Appellant likely knew well the FEI officials at whom he directed his incorrect language, such would not be apparent to a public observer either on the ground or of the video, and even if it were, would not condone such conduct.



250. These factors, and the circumstances of the case in general, are all the more relevant in light of the higher standard placed upon the Appellant as a national and FEI official, as well as a Chef d'Equipe.
251. The Panel, taking all the evidence on the record into account, also notes that all of the evidence (witness testimony, video footage, the Appellant's testimony) corroborates each other. The Panel further notes that the Appellant *repeatedly* directed incorrect language towards *more than one* FEI official, and his reaction *lasted over a six-minute* period. The Panel therefore considers that the Appellant's reactions were *very inappropriate* to his rank and to the occasion.
252. As said before, a person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances. The question that needs to be answered is how much the Appellant's behaviour departed from the expected.
253. Since the standard of behaviour expected from the Appellant was very high according to his rank and the occasion, when he acted over such a prolonged period (even if part of one continuous action and as a result of provocation) and his reactions were directed at more than one FEI official, the established behaviour *highly* departed from the expected.
254. In conclusion, since the Appellant highly departed from the expected behaviour to his rank and the occasion, in addition to being negligent, the Panel finds that there are relevant factors under the Article 169.1 which describe the Appellant's behaviour as *very negligent*.

- **In the circumstances, what are the appropriate sanctions (Article 169.3. and 169.5. and 169.6.3. of the FEI GR)?**

255. In this regard,

(i) Article 169.3. of the FEI GR reads as follows:

*"A fine is appropriate particularly in cases where the offender has acted **negligently**"* (emphasis added) and

*"An oral or written warning is appropriate in cases of minor violations committed unintentionally and without significant consequences."*

(ii) Article 169.5. of the FEI GR reads as follows:

*"A Provisional or Final Suspension, on such terms and subject to conditions as the FEI Tribunal, or as the case may be, the FEI Secretary General, may impose, is appropriate in cases of intentional or **very negligent** violations. In certain cases a Provisional or Final Suspension may be automatic under the Statutes, GRs or Sport Rules."* (emphasis added)

(iii) Article 169.6.3. of the FEI GR reads as follows:

*“Incorrect behaviour towards (a) Event Officials or any other party connected with the Event (other Athlete, journalist, public etc.) and/or (b) Doping Control Officers, Testing Veterinarian, Chaperones and/or any other person involved in the collection of a doping control sample may entail a fine of CHF 200.- to 10,000.- and/or a Suspension of a minimum of three (3) months up to a maximum of twelve (12) months;”*

256. The Panel recalls that it has found that the Appellant behaved *negligently* and *very negligently*. Under the cited rules, in addition to the fine (Article 169.3), it gives this Panel a ground to impose a suspension (Article 169.5), which could be imposed in a period of time between 3 and 12 months (Article 169.6.3). This notwithstanding, the Panel must again note the exceptional nature of these circumstances and the Respondent’s implication in causing them to come about.
257. In light of the above, the Panel finds that the appropriate sanctions in the present matter shall be a 3-month suspension and a fine in line with the applicable regulations.

**- Can the Panel reinstate the Appellant to certain FEI positions?**

258. Next, the Panel turns to the Appellant’s request that the CAS reinstate him to the certain positions at the FEI. The Respondent argues: (i) that the Appellant’s request is inadmissible since the Appellant did not appeal the decision to relieve him of his duties, and he was supposed to do so within 30 days; (ii) that the Appellant has no legal right to be reinstated since there is an established procedure to elect or relieve a person from an elected position; and (iii) that such request is moot since the Endurance Committee is not currently operating.
259. The Panel notes that the Appellant’s request relates to the legal consequences of the present award, which will or will not follow according to the applicable FEI rules when the suspension as such no longer exists. It is beyond the Panel’s power in this case, the scope of which is the FEI Tribunal Decision dated 25 February 2019, to decide on anything else but that which was decided in the operative part of the Appealed Decision. Taking a decision on something more, especially something decided by a decision not under the umbrella of this appeal, would mean a decision without jurisdiction since there would not be a valid arbitration agreement which gives the power to the Panel to decide on a certain dispute. But the Panel also notes that, as a practical matter, the reinstatement needs not to be addressed separately since such a suspension was expressed to be provisional and due to the pending proceedings, so will cease to have effect on the under this Award, although that is unlikely to have any practical consequences if the Endurance Committee is not currently operating.

**VIII. CONCLUSION**

260. According to Article 169.6.3. of the FEI GR which reads *“Incorrect behaviour towards (a) Event Officials or any other party connected with the Event (other Athlete, journalist, public etc.) and/or (b) Doping Control Officers, Testing Veterinarian, Chaperones and/or any other person involved in the collection of a doping control sample may entail a fine of CHF 200.- to 10,000.- and/or a Suspension of a minimum of three (3) months up to a maximum of twelve (12) months”*, the prescribed fine for incorrect behaviour ranges from 200 to 10,000 CHF.

261. The Panel established the following factors which qualify as mitigating circumstances:

- (i) the Respondent's contribution to the Appellant's reaction: the poor organisation of the WEG 2018 and extremely bad conditions for the people and horses; the false start followed by the re-start and the final cancellation, all of which lasted for days compared to the few minutes of the Appellant's actions;
- (ii) the surrounding circumstances qualified as extremely exceptional;
- (iii) the Appellant's reactions to the circumstances of the event up to the cancellation of the competition: he was extremely helpful to others in trying to find a common solution;
- (iv) the Appellant's character and expertise;
- (v) the Appellant's responsibilities and investment at stake as the Chef d'Equipe;
- (vi) first-time offence;
- (vii) other people's reactions to the race cancellation, which were similar or worse;
- (viii) no consequence of the offence;
- (ix) the FEI's failure to warn the Appellant of his conduct at the scene of the event; and
- (x) that no third party/individual complained that the Appellant was not of correct behaviour during the event.

262. The Panel established the following factors which qualify as aggravating circumstances:

- The Appellant was the Chef d'Equipe, as well as a high-level national and FEI official, and as such the threshold for appropriate behaviour was higher than a regular participant;
- Working in high rank in the international environment of the equestrian world, one of whose main languages is English, the Appellant was supposed to be aware of the real meaning of the words addressed to the FEI officials. In addition, the Appellant made allegations of cheating on the part of the FEI.

263. To conclude, the Panel has already established that, based on the circumstances, the appropriate sanctions are a 3-month suspension and a fine for the reasons set out above.

264. When deciding on the proportional sanction in terms of the fine, the Panel is of the view that the mitigating factors outweigh the aggravating factors. The Panel therefore finds that the sanction imposed by the FEI, i.e. CHF 2000, serves the needed preventive and punitive functions for the Appellant as the offender and a high-level official.

## **IX. COSTS**

265. This case falls under Article R65 of the CAS Code, which provides:

*“R65.1 This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. [...]*

*R65.2 Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by CAS.*

*Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.– without which CAS shall not proceed and the appeal shall be deemed withdrawn. [...]*

*R65.3 Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*

*R65.4 If the circumstances so warrant, including the predominant economic nature of a disciplinary case or whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel.”*

266. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the Parties beyond the CAS Court Office fee of CHF 1,000, which was paid by the Appellant with the filing of his Statement of Appeal, and which is in any event retained by CAS.
267. As to a contribution to legal costs, the Panel decides that, considering that the Appeal was partially upheld and the Respondent’s contribution to the situation leading to the Appealed Decision, the Panel orders that the FEI makes a contribution to the Appellant’s expenses and legal fees in the amount of CHF 5,000, which corresponds to one-fourth of the requested amount.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The Appeal filed by Ignasi Casas Vaque on 15 March 2019 is partially upheld.
2. The Decision of the Tribunal of the Fédération Equestre Internationale dated 25 February 2019 in the matter of Fédération Equestre Internationale (FEI) vs Ignasi Casas Vaque on sanction (found at subparagraphs 10.1: -1) and -2)) is set aside and replaced with the following:
  - i. Mr. Ignasi Casas Vaque violated Article 169.6.3. of the FEI General Regulation, 23rd edition, 1 January 2009, updates effective 2019;
  - ii. Mr. Ignasi Casas Vaque is sanctioned with a three (3) month suspension and;
  - iii. Mr. Ignasi Casas Vaque shall be fined two thousand Swiss Francs (CHF 2,000).
3. The Fédération Equestre Internationale is ordered to contribute to Ignasi Casas Vaque's expenses and legal fees in the amount of five thousand Swiss francs (CHF 5,000).
4. All other and further prayers or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 10 January 2020

## THE COURT OF ARBITRATION FOR SPORT



Petra Pocrnic Perica  
President



Rui Botica Santos  
Arbitrator



James Robert Reid  
Arbitrator