Decision of the FEI Tribunal
dated 24 February 2020

Positive Anti-Doping Case No.: 2017/BS32

Horse: SAURA DE FONDCOMBE **FEI Passport No:** 103CM83/SUI

Person Responsible/NF/ID: Nadja PETER STEINER/SUI/10006562

Event/ID: CSI3*-W – Tetouan (MAR)/2017_CI_0656_S_S_02

Date: 5 – 8 October 2017

Prohibited Substance(s): O-Desmethyltramadol

I. COMPOSITION OF PANEL

Mr. Cesar Torrente, chair
Ms. Diane Pitts, member
Mr. Martin Gibbs, member

II. SUMMARY OF THE FACTS

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

2. **Summary information provided by Person Responsible (PR):** The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and during the hearing, as also made available by and to the PR.

3. **Hearing:** 3 February 2020, FEI Headquarters, Lausanne, Switzerland.

Present:
- The FEI Tribunal Panel
- Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:
- Ms. Nadja Peter Steiner, PR
- Dr. Monika Gattiker, Counsel
- Ms. Katharina Peter, PR's mother & Horse Owner
- Ms. Sandra Wiedmer, Secretary General SUI-NF

For the FEI:
- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel
- Ms. Müskat Hotin, Litigation Administrator

Observers:

- Ms. Valérie Horyna, FEI Tribunal member
- Mr. Mohammed Al Saberi, FEI Tribunal member

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 23rd edition, effective 29 April 2015 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("IRs"), and 3rd edition, 2 March 2018 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("EAD Rules"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("VRs"), 13th edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. **Person Responsible:** Ms. Nadja Peter Steiner, represented by Dr. Monika Gattiker of Lanter, Zurich, Switzerland.

3. Justification for Tribunal finding:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent,

Fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

EAD Rules Art. 10.2.1: "The period of *Ineligibility* for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A fine of up to CHF15,000 shall also be imposed and appropriate legal costs."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced during the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

1.1 SAURA DE FONDCOMBE (the "**Horse**") participated at the CSI3*-W in Tetouan, Morocco, from 5 to 8 October 2017 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Ms. Nadja Peter Steiner, who is considered as the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").

1.2 The Horse was selected for sampling during the Event on 8 October 2017.

1.3 Analysis of the blood sample no. 5561216 taken from the Horse at the Event was performed at the FEI approved laboratory, LGC in Fordham, United Kingdom (the **"Laboratory"**). The analysis revealed the presence of O-Desmethyltramadol in the blood sample. The estimated concentration of O-Desmethyltramadol in the sample was 0.5 ng/mL.

1.4 O-Desmethyltramadol is an opioid analgesic used in humans for the control of moderate to severe pain and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "FEI List"). Therefore, the positive finding for O-Desmethyltramadol in the Horse's

sample gives rise to an Anti-Doping Rule violation under the EADCMRs.

1.5 The Horse underwent another in-competition test on 13 October 2017 in Rabat, Morocco, i.e., 5 days after the sampling in question, which analysis results were negative.

2. Further proceedings

2.1 On 9 November 2017, the FEI Legal Department officially notified the PR, through the Swiss National Federation ("SUI-NF"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated. The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the Tribunal.

2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.,* 9 November 2017, until 8 January 2018. The Provisional Suspension of the Horse was challenged. On 22 December 2017, the Preliminary Hearing Panel issued a Preliminary Decision lifting the Provisional Suspension of the Horse as of 22 December 2017, midnight CET.

3. The B-Sample analysis

3.1 Together with the Notification Letter of 9 November 2017, the PR was also informed that she was entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.

3.2 On 30 November 2017, the FEI informed the FEI accredited Laboratory LCH – Laboratoire des Courses Hippiques - that the FEI has received a B-Sample request, and that the PR's expert will attend the entire B-sampling.

3.3 On 9 January 2018, the FEI notified the PR of the results of the B-Sample analysis, which confirmed the presence of O-Desmethyltramadol in the Horse's blood.

4. Preliminary Decisions

4.1 On 22 December 2017, the Preliminary Hearing Panel issued a Preliminary Decision, and decided to maintain the Provisional Suspension of the PR as the requirements of Article 7.4.4 of the EAD Rules for the lifting of the Provisional Suspension had not been met. The Provisional Suspension of the Horse was however lifted.

4.2 On 8 August 2018, the Preliminary Hearing Panel issued another Preliminary Decision and decided to lift the Provisional Suspension of the PR, pursuant to Article 7.4.4 (iii) of the EAD Rules. The Preliminary Hearing panel at the time in taking into consideration all submissions made and evidence presented, as well as all specific circumstances of the case at the time, found that exceptional circumstances existed that warranted the lifting of the Provisional Suspension of the PR. This Preliminary Decision, however, does not prejudice in any way the Final Decision to be made by the Tribunal now.

5. Science

5.1 The FEI submitted as follows with regard to the science in the present case:

"O-Desmethyltramadol (ODMT) is the major metabolite of Tramadol, an opioid analgesic used in human medicine for the control of moderate to severe pain. It is less effective than some of the other opioids for pain relief, but has relatively fewer side effects. Repeated administration of opioids can cause dependence and tolerance.

Tramadol is for human use only and is not licensed for veterinary use for horses. In recent years Tramadol has however been introduced in veterinary medicine, in order to try to find alternatives to other opioids, but its use has been questioned in some species. It is known to the FEI that Tramadol especially, is used and abused in horses due to its efficient analgesic properties and fewer side effects. There are a few studies of Tramadol use in horses with the aim to detect the metabolic profile of the drug in horses, and the half-life of the drug in horses.[2]

According to these studies, O-Desmethyltramadol (ODMT) is 200 times more potent at the micro-receptor than the parent drug.[3] *O-Desmethyltramadol also appeared to be a minor metabolite in horses, and which could hardly be detected in plasma (blood) samples.*[4] *These facts are showing that the metabolite ODMT also has analgesic effects.*

The estimated concertation of O-Desmethyltramadol in the Sample 5561216 was 0.5 ng/mL. The PR claims that this is an very low concentration, however, the FEI would like to highlight that nanograms per millilitre (ng/mL) is a common unit for positive findings, and cannot be considered as very low.

The FEI has consulted with its external Expert Professor [Prof. Stuart Paine] who concludes the following: (Exhibit 7)

- *"It is plausible that 0.5 ng/ml plasma can be obtained from contamination.*

- *With regards to contamination, "Transmission to /contamination of horses with ODMT through contact with humans" summarise the University of Zurich's findings from both transfer by sweat,*

urination on straw and a combination of both. Whilst this is not a scientific report I believe it is plausible to get the ODMT urine concentrations seen in their study especially through urination.

- *The majority of tramadol and its metabolites will excrete within 48 hours.*

- *Assuming a horse ingests 100 mls of urine (a typical full voiding), 400 ng/ml is quite plausible if urination from a human occurs not long after administration as peak levels will be higher than the average urine concentration.*

- *With regard to contamination by "sweat" then one would expect concentrations in sweat to be similar to blood. Whilst the publication using corpses suggest the skin concentration is higher than blood the difference is only 70% higher when assuming 1 gram of tissue is equivalent to 1 mL of blood (which is a reasonable assumption). Given the variability when measuring tissue and blood I don't believe that the tissue concentration is significantly different to blood. The concentration of 3 ng/ml in urine determined from the Zurich "sweat" study is approximately equal to 0.3 ng/mL in plasma based on the literature studies (urine is approximately 10 times higher than plasma for ODMT). This is similar to the 0.5 ng/mL observed in plasma from the rider's sample.*

- *Tramadol is a substance commonly used by humans that generate significant amounts of metabolites that are mainly excreted from the body in urine (and now evidence for sweat for ODMT) and therefore are potential sources of contamination through water supplies, handling horses and urinating in stables."*

The FEI concludes that it is scientifically plausible to reach concentrations of 0.5 ng/mL of O-Desmethyltramadol through contamination.

The FEI would however like to highlight that a low concentration does not necessarily indicate contamination. A low concentration can also be found at a certain time slot in the elimination curve, after the administration of the drug during the excretion of the substance from the body of the horse. Therefore no conclusions can be drawn as to the source of the positive sample with the concentration of 0.5 ng/mL of O-Desmethyltramadol."

6. Written and oral submissions by or on behalf of the PR

6.1 With regard to the source of the Banned Substance, the PR submitted that it was not possible to determine how and when the substance entered the Horse's body. The PR argued that in her opinion there was quite conclusive evidence, but due to the circumstances and specifically due to the characteristics of the show organizer, as explained in 6.5. below, it was not possible to gather further evidence. The PR had no control over these circumstances and could not have foreseen them when entering into the show.

6.2 In order to establish the existence of Tramadol in the environment, including in drinking water and widespread use of Tramadol in Northern Africa, including Morocco, the PR submitted several scientific studies, papers, as well as expert opinions by Prof. Laurent Bigler from the University of Zurich. Since the FEI expert does not dispute the scientific explanations and calculations provided by the PR, and comes to the conclusion that scientifically, it was plausible to reach the estimated concentration of 0.5 ng/mL of O-Desmethyltramadol through contamination from human to horse, these documents do not need to be further outlined in this Decision.

6.3 However, contrary to the FEI's submission, the PR argues that the concentration detected in the A-Sample (0.5 ng/mL) concerned only minimal traces of the substance. Furthermore, the Horse was tested again five (5) days after the Event, *i.e.,* on 13 October 2017 during another FEI event in Rabat, Morocco, where it tested negative.

6.4 More specifically, the PR submitted that after winning the GP on Sunday she had to hand over the Horse to a staff member of the Organising Committee (the "OC") for the entire prize giving ceremony, which lasted approximately 20-30 minutes. There was a picture taken during the ceremony with the Horse licking the staff member's hand. During the ceremony the Horse had plenty of time to lick the hands and the arms of this staff member. In the PR's opinion the Horse was most likely contaminated with Tramadol during the prize giving ceremony.

6.5 The PR further explained that the Event venue was a military base with no access for the public. She had tried to get water samples,[1] as well as to contact the person on the picture, which attempts were unsuccessful. Further, the response received by the show organizers were that the personnel had no contact with competition horses, which was clearly not true, as evidenced by the picture. Moreover, the PR submitted that – even if she managed to identify the person on the picture – in accordance with the culture in Morocco that person would never have admitted taking Tramadol and thus having caused a positive finding, or have admitted anything which would put The Morocco Royal Tour which was "under the patronage of King Mohammed IV of Morocco" under a negative image.

6.6 She therefore submitted that the staff at the Event was not properly instructed nor supervised by the OC to avoid contact with the competition horses. She had to hand over the Horse and the Horse stood behind her during the prize giving ceremony. This situation was not under her control, and she therefore bore No Fault or Negligence for the positive finding. Any further suspension or other sanction would be highly disproportionate and

[1] During the hearing the PR clarified that she did get water samples in 2019, *i.e.,* two years after the Event.

extremely unfair under the given circumstances.

6.7 In addition, the PR submitted that she has been registered with the FEI since 2006, has competed in approximately 2,000 FEI events to date, and has kept an impeccable reputation for the last twelve (12) years. She was a full time rider, even though not depending from that income. Furthermore, that she has been a member of the Swiss squad for at least the last four (4) years.

6.8 The Horse was stabled in Bois-le-Roi near Fontainebleau (France), which stables were also host for a number of professional riders. Her stable management and her professional environment were of highest standards. At shows she fed horses, including the Horse, a supplement – B(i)onutron by Laboratoire Aude-Vard(F-92582 Clichy CEDEX), who also supported a number of well-known athletes. Her main focus was on the horses' welfare. In case a horse was not fit, it did not compete, the work was reduced until that horse was fit again. As a result her horses did not have many treatments. The Horse was treated twice in 2017 (on 13 May 2017 and on 3 August 2017), and treatments included shoulder pentosan polysulphate on both occasions, and tarsal joint (hock) with hyaluronic acid, and back with discus compositum & traumeel on 3 August 2017. Finally, Tramadol was not used in her stables; neither for the Horse nor for any of her other horses.

7. Written submission by the FEI

7.1 On 9 January 2020, the FEI provided its Response in this case.

7.2 The FEI submitted that:

a) Article 3.1 of the EAD Rules makes it the FEI's burden to establish all of the elements of the EAD Rule violation, to the comfortable satisfaction of the Tribunal.

b) The elements of an Article 2.1 violation are straightforward. "*It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1*". Instead it is a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-sample taken from the Horse at the Event confirmed the presence of O-Desmethyltramadol and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. In any event, the PR does not dispute the presence of O-Desmethyltramadol in the Horse's sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.

c) Where a Prohibited Substance is found in a horse's sample a clear and unequivocal presumption arises under the EAD Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EADM Rules provides that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two (2) years, unless she is able to rebut the presumption of fault. If the PR fails to do so, the two (2) year period of Ineligibility applies.

d) The EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance entered into the Horse's system. Indeed, this requirement had to be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Banned Substance in the Horse. The FEI submitted in this context that the PR has to provide clear and convincing evidence that proves how the O-Desmethyltramadol has entered the Horse's system. In this case, the FEI submitted that the science was not disputed. However, there were crucial elements missing, namely there was no evidence of any person taking Tramadol being close to the Horse. Neither was there any evidence of water supplies being high in Tramadol concentration at the Event site. In the FEI's view contamination of the water supply would most likely have caused other positives from the Event, which was not the case.

e) The FEI was in addition missing the casual link between the use of Tramadol by a person who was in contact with the Horse, and the positive finding of O-Desmethyltramadol in the Horse. There was a plausible theory, but there was a lack of evidence of any human taking Tramadol medication who was close to the Horse during the Event, and potentially could have contaminated the Horse. Without any evidence to establish the causal link of the Tramadol and the Horse, such theory was only mere speculations. Therefore, the PR had not established how the substance entered the body of the Horse.

f) Further, the FEI highlighted that Banned Substances are never to be found in a competition horse, they are substances with no legitimate use and have a high potential for abuse. It was the PR's personal duty to ensure that no Banned Substance was present in the Horse's body. Despite the difficulty in Equestrian Sport to keep control over what the horse ingests and in addition to have full control at all times, the CAS

case law[2] has confirmed that the PR is in the best position to have this control and naturally also the person to have strict liability in relation to a positive finding in the horse. The PR's duty of care was very high.

g) Since the PR has not established how the Prohibited Substances entered the body of the Horse, there could be no reduction of the standard sanction for Banned Substances, namely two (2) years ineligibility period of the PR.

h) Due to substantial delays in the procedure the FEI agreed to the application of Article 10.10.2 of the EAD Rules (*Delays not attributable to the PR*). The FEI however also submitted that the FEI had granted the PR extra time to further investigate the case. However, despite the extra time given in the procedure, the PR did not find any new evidence in relation to the source of the Banned Substance.

i) The FEI respectfully requested that the Tribunal issue a decision:

(i) upholding the charge that the PR has violated Article 2.1 of the EAD Rules;
(ii) disqualifying the result of the PR and Horse combination obtained in the Competition, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the EAD Rules;
(iii) imposing a period of Ineligibility of two (2) years on the PR;
(iv) fining the PR a fine of 7 500 CHF; and
(v) ordering the PR to pay the legal costs of 2 000 CHF that the FEI has incurred in these proceedings, and
(vi) ordering the PR to pay the cost of the B sample.

8. Hearing

8.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.

8.2 During the hearing the Parties acknowledged that the Tribunal has respected their right to be heard and their procedural rights.

8.3 At the outset of the hearing, the FEI agreed and the panel accepted an

[2] See CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI, and CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI (para 209 & 203).

additional report submitted by the PR on the previous day, which in essence supports the previous submissions made regarding the use of Tramadol in Morocco.

8.4 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions.

8.5 The FEI on its part presented a calculation based on which the 0.5 ng/mL of the Banned Substance detected in the Horse's blood meant that the Horse actually contained 25,000 ng of that substance. The FEI further argued that a concentration of the Banned Substance in the blood could not be ignored, and argued that the studies submitted by the PR were mainly based on urine results and that the low concentration may also be shown at a certain time slot in the elimination curve. The PR disagreed with the FEI's calculation, and argued that the amount of the Banned Substance reported was close to detection limit, which thus meant the case concerned a low concentration. The fact that the Horse tested negative 5 days later was also an indication for the low concentration.

8.6 The PR confirmed that she was invited by the FEI to collect additional evidence. The PR further argued in this regard that if one looked at cases, most of them concerned a veterinarian injecting horses, or contamination of the horses by support personnel of Persons Responsible. All these possibilities could be ruled out in the present case. Furthermore, the PR informed that she had collected water from the Event site two years later in 2019, and the water, which was tested down to 50 ng/l, tested negative for the Banned Substance in question.

8.7 Furthermore, the PR explained at length what she did in order to contact the OC, to find out who the person on the picture holding the Horse was; however, her efforts did not lead to any results. The PR argued that even the FEI seemed to have had problems contacting the OC, and requested the FEI to assure that OCs do not put PRs in such situations. The PR insisted that she had had no other choice than to hand over the Horse to the staff of the OC during the prize giving ceremony, and explained that usually it would be her groom taking over the Horse then. In fact, she explained that all 5 riders attending the prize-giving ceremony were instructed to hand their horses over to OC staff. The representative of the SUI-NF confirmed that handing over the Horse to an unknown person was in her view not a "normal" procedure during competitions.

8.8 Moreover, the PR confirmed that only persons whom she trusted were driving the Horse to the Event, and the Horse was in good condition upon arrival, nor were there any incidents at the boxes. The PR explained that there had been people around with brooms at the stable.

8.9 Ultimately, the case at hand was out of her control. In her view the fact that the OC was not cooperating in the present case meant that they had to have something to hide. The OC's reaction spoke for itself and was a strong indication that the person on the picture was using Tramadol.

8.10 Finally, the PR argued that the source had to be contamination, as it could be ruled out that the Horse was treated with Tramadol, as the last treatment of the Horse was a long time ago, and even if the veterinarian had taken Tramadol it would have been out of the system. The PR also argued that the substance was not widely used or detected in horses. The FEI however submitted the opposite (see also the *Science section* of this decision), and argued that administration of the Banned Substance remains as likely as contamination in the case at hand. The FEI clarified that with regard to Banned Substances, like Tramadol, no sufficient information existed as to how long these substances remained in a horse's system.

8.11 The FEI confirmed that, while the FEI could not establish when the picture was taken, the FEI was confident that the Horse was shown on the picture and that the picture was taken from the Event. The PR explained that the picture belonged to the official pictures of the Event taken by the official show photographer.

8.12 Furthermore, the FEI confirmed having talked to the FEI Officials present at the Event, and having reviewed the reports from the Event. However, no irregularities were reported. The FEI signed host agreements with the OCs which state the obligations of the host. In addition, basic requirements for stable security and biosecurity are contained in the VRs. Further, that it would be impossible for the OC to rule out that no person working during the Event was taking Tramadol. The FEI stated that the burden of proof to establish the source was on the PR.

8.13 Moreover, the FEI confirmed that another 11 horses were also tested during the Event, however no other positive findings were reported.

8.14 With regard to Disqualification of results, the PR argued that if the Tribunal accepted the source of the Banned Substance put forward by the PR, there were no reasons to disqualify the results neither from the Competition nor from the Event, as the Horse competed clean. Otherwise the rules would be applied without a legitimate aim, which would be arbitrary, and an abuse of rights. The FEI on its side argued that Article 9.1 of the EAD Rules provided for an automatic disqualification of the results on the day the Horse tested positive, no matter whether the PR was at fault or not.

8.15 In the alternative, if the Tribunal did not accept the source of the Banned Substance, the PR argued that one had to look at the situation of the PR. The PR had to be in a realistic situation to prove her case. However, in the case at hand, the PR had no control over the Horse, and it was an obligation of the FEI to allow the rider the necessary control, and to create circumstances where the rider was not forced to hand over the Horse. The PR has had little chance to provide direct proof, as she was not able to contact the person on the picture. Based on these considerations no further sanctions should be imposed on her.

9. Post-hearing submissions

9.1 On 14 February 2020, the Tribunal requested

"(*i) the FEI to further elaborate on the application of Article 10.10.2 of the EAD Rules in the present case;*
and
(ii) the PR to provide her position with regard to the application of this provision."

9.2 The FEI further submitted as follows:

"The FEI does not have much to add to the application of Art 10.10.2 EADR.

The PR had requested a final hearing already in the end of 2018. The FEI reverted by phone and clarified should the case go before the Tribunal at this stage, the FEI would have to argue the standard 2 years sanction.

The FEI therefore offered to grant the PR more time to provide the evidence supporting her explanations. However, after the last communication, the PR's counsel did not revert to the FEI and the FEI did not actively contact the counsel until after the summer 2019. Therefore, some of this delay may be attributable to the FEI. As a consequence, the FEI recommends the application of Art 10.10.2 EADR."

9.3 The PR on the other hand submitted that *"(…) it was clear that there would be no further information after the submission of 22 June 2018 (which was already 8 months after the notification of the positive finding), and this was clearly communicated to the FEI legal department end of 2018."*

9.4 The PR further argued that if any additional suspension was to be imposed on her, the application of Article 10.10.2 of the EAD Rules would reduce any additional suspension by only one month, however with significant financial disadvantages for the PR.

9.5 In addition, the PR alleged as follows:

"The PR assumes it could happen again, that a matter is being brought before the FEI Tribunal, where the FEI raises every possible argument against a PR, instead of accepting that the problem is on the FEI's side (FEI or event organisers, OCs etc.)."

9.6 For these reasons, the PR argued that she saw *"no benefit in and, therefore, opposes to the application of article 10.10.2 EAD Rules."*

10. Jurisdiction

10.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs, as well as Article 18 of the IRs.

11. The Person Responsible

11.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as she competed with the Horse at the Event.

12. The Decision

12.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A and B Sample. The Tribunal is satisfied that the laboratory reports relating to the A and B Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratories are accurate. The Tribunal is satisfied that the test results evidence the presence of O-Desmethyltramadol in the blood sample taken from the Horse at the Event. The PR accepts the accuracy of the test results and the positive finding. O-Desmethyltramadol is a Prohibited Substance on the FEI List and the presence of O-Desmethyltramadol in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.

12.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.

12.3 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 EAD rule violation, *i.e.,* the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.

12.4 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that she bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the EAD Rules.

12.5 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.

12.6 To start with, the Tribunal has taken note of the PR's explanations as to the possible source of the O-Desmethyltramadol, namely though contamination through contact with a person from the OC to whom she had to hand over the Horse during the prize given ceremony. The PR submitted a picture from the Event which shows the Horse licking the hands of this person. The PR alleges that, since Tramadol consumption was high in Morocco, this person had probably taken Tramadol also. In accordance with the PR's arguments, the fact that the OC was not cooperating in the present case was also a strong indication that this person took Tramadol.

12.7 For the avoidance of any doubt, the Tribunal wishes to clarify that it does not find that the calculations by the Parties during the hearing, or the outcome of it, are decisive for the decision in the present case. In addition, the Tribunal would like to point out that the Banned Substance in question is not a threshold substance, and therefore any amount detected is considered a positive finding. In any case, the PR does not dispute that a violation of Article 2.1 of the EAD Rules occurred.

12.8 The Tribunal further finds that since the Parties agree that scientifically contamination could be a possibility, the amounts detected in the blood of the Horse are not further relevant in this case and in any case, the PR does not dispute that a violation of Article 2.1 of the EAD Rules occurred.

12.9 As the PR confirmed herself – in her last submission, as well as during the hearing - she cannot prove that the person holding the Horse during the prize giving ceremony had taken Tramadol, and thus contaminated the Horse.

12.10 The Tribunal agrees, and the Tribunal does not find that the PR has shown – on a balance of probability – how the Banned Substance entered the Horse's system. The Tribunal finds that the PR's explanations do not fulfil the required threshold of more likely than not. The Tribunal finds that the Horse could have been also contaminated prior to the Competition by

anyone working at the stables, as the PR suggested that there were many persons working at the stables with brooms. Furthermore, administration cannot be excluded either in the present case.

12.11 Most importantly, the Tribunal finds that the mere fact that Tramadol is widely used in Morocco does not prove that the specific person holding the horse during the prize giving ceremony, as shown on the picture, had taken Tramadol on that specific day, and thus contaminated the Horse. The PR presented no evidence to this effect. If one was to follow the PR's logic, also the other 4 persons holding the horses for the riders during the prize giving ceremony should have ingested Tramadol and one would think that at least some of the other horses might have come in contact with those persons, and thus contaminated those horses also. However, none of the other horses tested positive. While the Tribunal does not know how many of the other 5 horses have been tested, the Tribunal would expect that more than one medal winner was called for sampling.

12.12 However, the foregoing is irrelevant for the source of the Banned Substance in this case. The Tribunal does not have to second guess how the Banned Substance entered the Horse's system, but to evaluate whether the explanation put forward by the PR is more plausible than not, which has not happened in the present case. As confirmed by various CAS panels, the PR has to present factual circumstances, whereas mere speculation or theoretical possibility are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the PR. The PR's scenario has to reach a 51% threshold for each of these separate comparisons.[3]

12.13 Coming back to the case at hand, unfortunately the PR has not provided any factual circumstances nor evidence that the person in question had taken Tramadol: this remains mere speculation. Again while contamination through contact with a person is scientifically possible, not more than this theoretical possibility has been presented to the Tribunal. The Tribunal thus does not find that the PR's explanation reaches the 51% threshold. In the Tribunal's view administration remains as likely as contamination, and contamination could have occurred at any other point in time before or during the Event.

12.14 As a result, the Tribunal finds that the PR has not established – on a balance of probability – how the Banned Substance entered the Horse's system.

[3] See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs.

12.15 Therefore, the Tribunal cannot establish the PR's degree of fault for the rule violation, even though the Tribunal has no reason to doubt that the PR carefully manages her horses, as also accepted by the FEI. Neither does the fact that the PR had to hand over her Horse changes anything in this regard. From a legal point of view, where the first hurdle has not been met, *i.e.,* establishing the source of the Banned Substance, the Tribunal cannot continue with the second step and evaluate the PR's degree of fault.

12.16 As a result, the Tribunal finds that no reduction under Articles 10.4 and 10.5 of the EAD Rules is warranted in this case. Further, the Tribunal notes that Article 10.6 of the EAD Rules has not been invoked.

12.17 The Tribunal notes that the PR has been provisionally suspended for nine (9) months. If the PR respected the conditions of the provisional suspension, which is presumed, as nothing to the contrary has been submitted, the period of the Provisional Suspension shall be credited against the final period of Ineligibility.

12.18 Moreover, since the PR could not establish the source of the Banned Substance, the Tribunal finds that the PR can neither show that the Horse was clean during the Competition. Therefore, the Tribunal disqualifies the results of the Horse and PR combination of the Competition, as well as of the entire Event. No further discussion with regard to Article 9.1 of the EAD Rules (*Automatic Disqualification of Individual Results*) is therefore necessary.

12.19 Finally, the Tribunal notes that the FEI would accept the application of Article 10.10.2 of the EAD Rules for the period of Ineligibility to start as early as from sample collection due to Delays not attributable to the PR. The FEI explained that it had given *"(…) the PR more time to provide the evidence supporting her explanations. However, after the last communication, the PR's counsel did not revert to the FEI."*

12.20 On this issue, the PR rejected the application of said article and accepted that *"(…) it was clear that there would be no further information after the submission of 22 June 2018 (which was already 8 months after the notification of the positive finding), and this was clearly communicated to the FEI legal department end of 2018."*

12.21 On this issue and having heard both parties, the Tribunal does not agree with the FEI approach nor with the explanation given by the PR. It is clear from the case file that the PR did not make any submissions after the Provisional Suspension of the PR was lifted on 8 August 2017 until 1 November 2018, and further the PR only requested for a hearing date to

be found on 22 December 2019, whereas the FEI informed the PR on 22 November 2018, that the FEI was not satisfied with regard to the source of the Banned Substance, and that the FEI would not enter into a Settlement Agreement. The Tribunal finds that the delays in the proceedings are clearly largely attributable to the PR, and thus Article 10.10.2 of the EAD Rules cannot be applied.

12.22 Furthermore, the Tribunal believes that following fundamental principles of these kind of procedures and as mentioned above, the PR legally did not establish the source of the Banned Substance and how it entered the horse's body and therefore the submission of the PR stating that *"(…) the problem is on the FEI's side (FEI or event organisers, OCs etc.)"* is not relevant.

12.23 Therefore, the Tribunal rejects the application of Article 10.10.2 of the EAD Rules for the period of Ineligibility to start as early as from sample collection due to Delays not attributable to the PR.

13. Disqualification

13.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.

14. Sanctions

14.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be two (2) years.

14.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

1) The PR shall be suspended for a period of **two (2) years**. The period of Provisional Suspension, effective from 9 November 2017 to 8 August 2018 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible **until 23 May 2021.**

2) The PR is fined **seven thousand five hundred Swiss Francs (CHF 7,500).**

3) The PR shall contribute **two thousand Swiss Francs (CHF 2,000)** for the cost in these proceedings. In addition, the PR shall bear the cost of B-Sample analysis.

14.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).

14.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).

14.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

14.6 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

a. The Parties: Yes

b. The President of the NF of the person sanctioned: Yes

c. The President of the Organising Committee of the Event through his NF: Yes

d. Any other: No

FOR THE PANEL

Mr. Cesar Torrente, FEI Tribunal panel chair