

**DECISION of the FEI TRIBUNAL
dated 10 February 2020**

Banned Substance Case No.: 2018/BS23

Horse: VENI VIDI VICI **FEI Passport No:** 102MJ29/JOR

Person Responsible/NF/ID: Huda KAYALI/JOR/10081862

Event/ID: CSIY-B – Amman (JOR)/2018_CI_1640_S_Y_01

Date: 18 – 19 October 2018

Prohibited Substance(s): Stanozolol, 16-beta-hydroxystanozolol, Phenylbutazone, Oxyphenbutazone

I. COMPOSITION OF PANEL

Ms. Valérie Horyna, one member panel

II. 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 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2018, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Huda Kayali.

3. Justification for sanction:

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)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

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. 7.6.1: "At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

III. DECISION

1. The Parties

- 1.1 The Person Responsible ("PR") in accordance with Article 118.3 of the GRs, Ms. Huda Kayali, is a jumping rider for Jordan.

- 1.2 The Fédération Equestre Internationale (the "**FEI**" and together with the PR, the "**Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Factual Background

- 2.1 The PR competed with the horse VENI VIDI VICI (the "**Horse**") at the CSIY-B, in Amman, Jordan, from 18 to 19 October 2018 (the "**Event**").
- 2.2 During the Event, in-competition samples (blood) were collected from the Horse. Subsequent analysis of the sample revealed the presence of Stanozolol, 16-beta-hydroxystanozolol, Phenylbutazone, Oxyphenbutazone in the blood.
- 2.3 On 13 November 2018, the FEI notified the PR of an adverse analytical finding and alleged a violation of Article 2.1 of the EAD Rules. Together with the Notification Letter, the PR was informed that she was provisionally suspended and was provided with the opportunity to request a Preliminary Hearing.

3. Further proceedings

- 3.1 On 23 January 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2018/BS23 VENI VIDI VICI, and submitted the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EAD Rules.
- 3.2 On 3 February 2020, the FEI Tribunal Chair nominated a panel for the case at hand. Both Parties expressly accepted the constitution of the panel.

4. Agreement between Parties

- 4.1 On 23 January 2020, the Parties reached the following Agreement:

*** Quote***

In the matter of the Adverse Analytical Finding related to the samples, which were collected from Ms. Huda Kayali's horse VENI VEDI VICI (the "Horse") at the at the CSIY-B - Amman (JOR) Event on 18-19 October 2018 (the "Event"), Ms. Huda Kayali (the "PR") and the Fédération Equestre Internationale (the "FEI" and together with the PR, the

“Parties”) agree, in accordance with Article 7.6.1 (*Agreement between Parties*) of the EAD Rules, on the following:

- 1) The **Presence of a Banned Substance** in the Horse’s sample constitutes a violation of Article 2.1 of the EAD Rules.
- 2) **Ineligibility Period:**
The Parties agree that the prerequisites for Article 10.5 of the EAD Rules (Reduction of the Period of Ineligibility based on No Significant Fault or Negligence) are fulfilled in the case at hand and that the applicable period of Ineligibility shall be seventeen (17) months, starting on the date of notification, namely 13 November 2018, until 12 April 2020.
- 3) **Provisional Suspension of the Horse:**
The PR has not contested the Provisional Suspension imposed on the Horse and therefore accepts that it remained in place until 12 January 2019.
- 4) **Disqualification of Results:**
In accordance with Articles 9 and 10.1.2 of the EAD Rules, all the results achieved by the PR with the Horse at the Event are disqualified, including forfeiture of medals, points and prizes.
- 5) **Education Requirements:**
Ms. Huda Kayali is to support the FEI in its anti-doping campaign and to actively engage in Athlete anti-doping education. In detail, she agrees to be featured in a testimony/participate for the FEI anti-doping education/ outreaches in Jordan.
- 6) **Full Settlement and Resolution:**
This agreement resolves and settles all outstanding matters between the FEI and the PR, Ms. Huda Kayali, including the horse VENI VEDI VICI.
Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.
- 7) **Fine and Legal Costs:**
 - (a) The PR shall contribute with a fine of 5 000 CHF and the legal costs of 2 500 CHF.

- (b) No further Sanctions than those mentioned in this agreement should apply to the PR in relation to the above mentioned cases.
- 8) **Right of Appeal:**
This Agreement will constitute the decision for this case. Consequently it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.
- 9) **Public Disclosure:**
This agreement is subject to approval of the FEI Tribunal, who will issue a final decision in the case. All final decisions of the FEI Tribunal are published on the FEI website.
- 10) For avoidance of doubt, this violation of the EAD Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8.3 of the EAD Rules.
- 11) The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

End Quote

I – Case Summary and Reasons (as provided to the Tribunal by the Parties as part of the Agreement)

“1. CASE SUMMARY

- 1.1 The Person Responsible (“PR”), Ms. Huda Kayali, is a 20 year old jumping rider for Jordan.
- 1.1 The Fédération Equestre Internationale (the “FEI”) and together with the PR, the (“Parties”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Dressage and Para-Driving).
- 1.2 Dr Marcello Dias Grilo, FEI ID 10170495, is the Support Personnel for the purpose of the positive finding in this case. Separate proceedings are opened against the veterinarian in this case.
- 1.3 The PR took part with her horse VENI VIDI VICI (the “Horse”) at the CSIY-B - Amman (JOR) Event on 18-19 October 2018 (the “Event”).

As a member of the Jordan Equestrian Federation, (the "JOR NF"), the latter being a member of the FEI, the PR was bound by the EAD Rules¹.

- 1.4 The Horse was selected for testing on 19 October 2018. The resulting samples were transported to the FEI approved HKJC Racing Laboratory, in Hong Kong (CH) for analysis.
- 1.5 By notification letter dated 13 November 2018 the FEI informed Ms. Huda Kayali, in her capacity as the Person Responsible, and the JOR NF, of an alleged violation of Article 2.1 - *The Presence of a Banned Substance in a Horse's Sample*, of the EAD Rules. In accordance with Article 7.4.1 of the EAD Rules, the FEI provisionally suspended the PR from all competition as of 13 November 2018. The Horse was also provisionally suspended from the same date for two (2) months, until 12 January 2019. (Exhibit 1)
- 1.6 Stanozolol and its metabolite 16-beta-hydroxystanozolol, are anabolic steroids that are used to improve performance by promoting muscular development. The substances are classified as a Banned Substance under the FEI Equine Prohibited Substances List. Phenylbutazone and its metabolite Oxyphenbutazone are anti-inflammatory drugs with analgesic effects and classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List. A positive finding for Stanozolol, 16-beta-hydroxystanozolol, Phenylbutazone, Oxyphenbutazone constitutes a prima facie Equine Anti-Doping Rule violation.
- 1.7 On 29 November 2019, the PR admitted the violation and had found a plausible explanation for the positive finding. The Horse was given the product Sungate, by its veterinarian, which contains Stanozolol, and also Bute, which contains Phenylbutazone. (Exhibit 2)
- 1.8 On 17 January 2018, the PR submitted her full explanations in the case. (Exhibit 3) The PR's submission, also included a signed statement from the individual who administered the Banned Substance to the Horse.
- 1.9 On 6 March 2018, the PR submitted additional information about her case. (Exhibit 4)

¹ Applicable rules of this agreement are the 2018 version of the FEI Equine Anti-Doping and Controlled Medication Rules ("EADCM Rules") and this agreement is made in accordance with Article 7.6.1 of these Rules. All capitalised terms used but not defined herein shall have the meaning ascribed to such terms in the EADCM Rules.

1.10 The veterinarian Dr Marcello Grilo, explains in his statement that he is an equine specialist since 1992 and has worked for the Kayali family for 17 years and comes out to Jordan twice a year. Further, that the Horse suffered from lameness due to degeneration joint disease and also chronic kissing spine disease. Due to this he treated the Horse with an intra-articular injection of Sungate (Stanozolol 5mg/ml and HA, (Hyaluronic Acid) and Amikacin (Antibiotics) on the right hind stifle joint and in addition both lower hocks with Triamcinolone, HA ad Amikacin. The thoracic region, the spinal process and the sacroiliac regio was treated with Sarapin ,Triamcinolone, Vit E and Sungate on sacroiliac region. After that he recommend the stable manager and trainer to give Gastroprotector, Bute, Methocarbamol tablets and Vit E orally, to help the horse to recovery from the pain and lameness. The treatments were done in the first week of October 2018. He further gave instructions to the manager of the stables and to the trainer not to ride the Horse the following two months, in order for the Horse to be able to fully recover. He did not know that the PR was planning on competing the horse only shortly after the treatment. (Exhibit 3a)

1.11 Among other things, the PR's submission advised of the following:

- The PR is one of five children of the Kayali family and the PR lives for her horses and is the one in the family who loves horses the most and is fully committed to horses. The PR turned 20 recently and at the time of the violation she was 19 years old. The PR is one of the most talented riders in Jordan.
- The well-being of horses has always been her top priority throughout her life. The PR plays a decisive role in the family in ensuring that the horses are treated exceptionally well in the family stables. The PR sees horses as companions. The PR never wanted anything to do with doping. This does not correspond to her nature and her sense of duty and contradicts her love for horses. The PR studies at university and concentrates her free time entirely on horses.
- The PR has not been found guilty of any misconduct, be it doping or any other form of disciplinary misconduct since the PR started riding horses as a child.
- The PR herself makes sure that no feed is used that is not permitted. She and her family give clear instructions to the stable manager to only give the best quality food available to their horses and to be precautious in order to avoid contaminated food and prohibited food supplements.

- She also dealt with the treatment reports of the veterinarian, and followed the veterinarian's instructions and was interested in the opinion of the attending physician.
- Also for the time of this violation, she did controlled the medical reports of the Horse. However, she is not a veterinarian and those treatment reports did not mention that a banned substance was administered to the Horse.
- Furthermore, since the PR started riding horses as a child, the family had the following system in place for medical treatment of horses and the information of the PR:
 - a) All medical treatments can be done only by a veterinary who is a carefully selected specialist and that has the duty to respect all applicable FEI rules.
 - b) The veterinarian has the duty to inform the PR or the stable manager whether the horse is able to compete or whether during a certain period of time competition should be avoided.
- The PR was of the strong believe that this protocol was always followed, also this time, since the family never had any incident so far.
- After the notification of the positive finding, the PR was in contact with the veterinarian Dr Marcello Grilo. He assured the PR that the treatment was absolutely necessary and there was no bad intention.
- As can be seen from the declaration of the veterinarian, he did not inform the PR, but only the stable manager, Mr Jadi, because the PR was not present.
- Dr Marcello Grilo had in fact informed the stable manager exactly how the treatment should be done and continued and that the horse should not be ridden during 2 months due to the lameness and the treatment performed and until the horse had recovered fully.
- Dr Marcello Grilo was not aware that the Horse was going to compete.
- The stable manger's English language skills are not good, and he allegedly misunderstood the veterinarian. He explains that he was in close contact with Dr. Marcello Grilo and he told the PR that the veterinarian after carefully visioning the horse through video chats, would have confirmed that jumping exercises can be started and that the PR can compete in competition. It is now clear that the stable manager did not inform the PR correctly about the real instructions

from Dr Marcello Grilo to not ride the horse for 2 months and even did not inform Dr Marcello Grilo that the horse is foreseen to take part in competition.

- In fact, the treatment with the Horse was very successful and the horse did improve a lot during the days after the first medical intervention. The also Horse recovered faster than expected and after a few days it did not show any signs of lameness anymore.
- The fact that the horse recovered so well and so fast did not lead the PR to doubt the health and welfare of the horse for competition.
- The PR was totally unaware of the situation that the horse underwent a medical treatment.
- The PR was however, careful and checked the paper of the examination provided by Dr Marcello Grilo before the competition. These documents do not mention any use of banned substances. The invoices she could not check before the event took place, because they were sent only after the Event in question.
- The PR as a medical layman could not detect any sign of a used prohibited substance. Furthermore, there is nothing in the veterinary records that should have made the PR suspicious ore more vigilant.
- In addition, the PR was misled by the confirmation of the stable manager before the competition in question.
- Apart of that, the PR does argue that neither the Jordanian NF nor the FEI has informed and educated the PR about these exceptionally strict control rules that must be followed by a PR to avoid cases of doping and that even no trust shall be placed in a veterinarian that for more than 17 years has provided medical care for horses and when there has never been any discrepancies or even misconduct and hence no reason not to trust the veterinarian.
- Furthermore, the PR points out that no one ever did explain her the "strict liability principle" in all its facets. No educational course was provided to the PR in that sense. Her knowledge of the rules is therefore limited.

2. FULL REASONING FOR THE AGREEMENT

2A. How the substance entered the body of the Horse

- 2.1 The PR has established on a balance of probabilities how the substance Stanazolol entered the body of the Horse, by injection with a circle of Sungate by the veterinarian Dr Marcello Grilo without her knowledge.
- 2.2 In addition, Bute was prescribed to the Horse for treatment and given by the stable manager, and lead to the positive finding of Phenylbutazone.
- 2.3 The Parties therefore agree that the PR has fulfilled the threshold of how the substance entered the Horse's body.

2B. Fault and Negligence for the rule violation

- 2.4 In terms of the degree of Fault and Negligence by the PR for the rule violation, the starting point of any evaluation is the "personal duty" of the PR following from Article 2.1.1 of the EAD Rules, i.e. her personal duty to ensure that "banned substance is present in the Horse's body".
- 2.5 It has been stated in several cases that the PR cannot rely on any other person to perform his duty of care. In CAS jurisprudence it is clear that "the duty of caution or due-diligence is non-delegable."² For example it is therefore not possible for a Person Responsible to rely on or blame any other person, for the positive case.
- 2.6 In addition, Article 10.4 of the EAD Rules further states that:

No Fault or Negligence does not apply in the following circumstances:

(b) the Administration of a Banned Substance by the Person Responsible's veterinary personnel or member of the Support Personnel without disclosure to the Person Responsible. Persons Responsible are responsible for their choice of veterinary personnel and Support Personnel and for advising veterinary personnel and Support Personnel that Horses cannot be given any Banned Substance at any time."

- 2.7 In the case "Royal des Fontaines"³, the Sole Arbitrator endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible, stating (at para 57):

² CAS 2013/A/3318 *Stroman v. FEI* para 71.

³ CAS 2015/A/4190 *Mohammed Shafi Al Rumaithi v. FEI*

"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent [the FEI] put it in its skeleton argument

"The FEI believes that making the rider responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It is strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse'.

The Sole Arbitrator respectfully agrees".

- 2.8 In the case "Glenmorgan"⁴, the Panel confirms that the rider is best fit to control the Horse before a competition. *".. Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."*

"The Panel wishes to emphasize again that the fault or negligence which determines the measure of the Appellant's sanction is not that of the Dr. It is the Appellant's own fault and negligence in not having exercised the standard of care applicable to a PR which, like the non-equine Athlete, is placed at the exercise of "utmost caution". It is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body." (emphasis added)

- 2.9 In the Glenmorgan case the positive finding had also been caused by the action of an individual other than the PR, but not disclosed to him. In fact *"the particular PR had, with his father, implemented a system involving pre-race testing, (and) had employed experienced staff to look after his horses who were properly instructed to carry out their obligations"* (para 239)

- 2.10 The case further gives examples of measures that the PR had in place in order to avoid anti-doping rule violations. (para 222):

⁴ CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI (para 209 & 203)

"The staff employed at the Stables are highly qualified and are instructed and reminded of their duties to comply with the policy of clean racing and with FEI regulations. All are appropriately qualified and experienced.

The veterinary department follows procedures to ensure (1) that all medicines are continually kept under lock and key; (2) all drugs that are removed from their stock must be recorded by the vet assistant and Dr.; (3) when purchasing products, vets must seek a complete breakdown of the ingredients and where appropriate, seek a certificate confirming that they are "race allowed";

Dr. was required to complete the following records upon administering medical products: (1) pre-ride medication form; (2) a list of products administered to each horse, and (3) a lists of the medicines purchased from the pharmacies;

The Appellant at all material times trusted in the systems and procedures and the work of the staff at the Stables.

The system in place relied on the staff and key members such as Dr. carrying out their duties and following the procedures laid down." (Emphasis added)

- 2.11 Despite the fact that the PR and his father in the Glenmorgan case had anti-doping systems in place and had staff they trusted who were well informed, the Panel imposed an 18 months of suspension on the PR. Even though it was clear that the veterinarian had administered the substance to the horse and failed in his normal duty of care, the PR was still the responsible for this conduct. This case demonstrates that the duty of care on the PR is very high, and the PRs are the responsible for any treatment given to their horses by their Support Personnel.
- 2.12 As the CAS jurisprudence confirms, the rider is, no matter what, the Person Responsible for the horse she is competing with, and cannot delegate that duty to another person. She therefore has an obligation to ensure that no Prohibited Substance enters into the horse's system, and must act with utmost caution in order to fulfil this duty. Conclusions to be drawn from the case law are that the duty of care is very high and that this duty of care is non-delegable. But also that Persons Responsible are responsible for their Support Personnel and any medical/veterinary treatments given to their horses by their veterinarians, groom or any other Support Personnel.

2.13 In light of the stated CAS jurisprudence on this point, the FEI respectfully submits that making the PR prima facie responsible for the condition of the Horse while competing, subject to her ability to prove she bears No (Significant) Fault or Negligence for its doped condition, is a reasonable and justifiable stance.

2.14 Further, it is necessary to look at the definitions of Fault, as defined in Appendix 1 of the EAD Rules.

"Fault is any breach of duty or any lack of care appropriate to a particular situation ...the degree of risk that should have been perceived by the Person Responsible and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk... In assessing the Person Responsible's degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's departure from the expected standard of behaviour." (Emphasis added)

"No fault - The Person Responsible establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse's system otherwise contained, a Banned or Controlled Medication Substance."

"No significant fault - The Person Responsible establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation."

2.15 Firstly, the FEI would like to highlight 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 abuse⁵. It is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body. For No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence, the PR has to establish that she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that she had administered to the Horse, or the Horse's system otherwise contained, a Banned Substance.

⁵ Veterinary Regulations Article 1055.

- 2.16 In the case of Stanozolol, it is one of the old school doping substances and one of the most known anabolic steroids, the FEI has a zero-tolerance for such substance in a competition horse.
- 2.17 The PR has since the positive finding actually changed her procedures at the stables. The fact that she is now improving the procedures, means that she did not do the utmost to avoid a positive test previously.
- 2.18 Secondly, as concluded by the case law above, the PR is still responsible for the administration of medications and treatments done by her Support Personnel.
- 2.19 The FEI is of the opinion that in cases where the PR or their Support Personnel actually have administered or treated a horse willingly with a Banned Substance, No Fault and Negligence cannot be applied. In this case, the Horse was actually injected by the veterinarian with Stanozolol, and it is clearly stated on both the invoice from the veterinarian and also in his statement. With this background and based on Art 10.4 of the EAD Rules, No Fault or Negligence cannot be applied in the case at hand.
- 2.20 However, the Panel in the Glenmorgan case states⁶:

"The Panel approaches the possible application of the "No Significant Fault" defence by asking whether the Appellant can show on the particular circumstances relating to the violation that his fault was not significant in the natural ordinary meaning of that word. The Panel acknowledges that this inquiry must be carried out in circumstances where the Appellant as PR bears strict non-delegable duties to exercise the "utmost caution" to avoid positive tests. The Panel also recognises that the bar for the application of the defence should not be set too high. While there are many CAS awards involving the consideration of the defence in differing factual circumstances, the exercise is essentially one of considering the possible application of the defence in the circumstances which led to the violation."

"...in the context of equine sport where a PR, while having personal responsibility at all times, is likely to rely on systems and the work of third parties to a significant degree (and, of course, to a greater extent than a human athlete) and where the particular PR had, with his father, implemented a system involving pre-race testing, had employed experienced staff to look after his horses who were properly instructed to carry out

⁶ Para 236-237 and 239-240

their obligations. While the PR should have done more to guard against mistakes and failures by those responsible for the horses from giving rise to positive tests, when his fault is considered in the overall circumstances, the Panel concurs that it can properly be termed as constituting a lesser degree of fault so that the No Significant Fault defence under 10.5.2 can be applied.”

- 2.21 The PR in this case, despite not being a minor is of young age with limited knowledge of the anti-doping rules. The PR and her family had given instructions to their support personnel to only give the best possible care to the horses, the most expensive medications and treatments and the best quality feed and never to compromise on the quality of the horses care. The PR consequently trusted her entourage and support personnel to give the best possible care to the horses.
- 2.22 The veterinary care of the horses was therefore only given by the veterinarian. The veterinarian in this case had worked for the family for over 17 years, and there had never been an issue before. They even have him fly over from Italy, in order to give the best possible care to their horses since the veterinary knowledge in Jordan is limited and there are not veterinarians specialised in sport horses.
- 2.23 On the one hand, she could not have expected that the veterinarian she trusted who had worked with the family for 17 years would inject the Horse with Stanozolol, but on the other hand, she should personally have controlled all administration and treatments done by the veterinarian both with the veterinarian and the stable manger before competing, especially considering the condition of the Horse.
- 2.24 The PR despite her limited anti-doping knowledge still had some procedures in place to avoid a positive test, as example, she only let the horses be treated by a professional veterinarian and followed the instructions of the vet carefully, she instructed the support personnel to only give the best possible products, feed and care to all the horses. For this particular case, the Horse improved very quickly from its condition and the PR was therefore confident that the Horse was fit to compete again.
- 2.25 From an FEI perspective, this a very serious violation and the Horse was not fit to compete, since it had several treatments that are inconsistent and non-compliant with normal equine veterinary treatments for competition horses. Especially the treatment with Sungate, containing Stanozolol, which is an anabolic steroid not only prohibited at all times under the FEI rules, but also prohibited by law in many countries. This is something that each and every treating veterinarian for sport horses

must know. To ignore this fact and to not look at the FEI Clean Sport App before administration of such substance is truly negligent. Therefore, separate proceedings are opened against the veterinarian in this case.

- 2.26 The PR has advised the FEI that she has now implemented steps to ensure that a matter of this nature cannot be repeated. The PR will always personally check the records of any veterinarian caring for any horse that she competes. She has added the FEI Clean Sport App to her telephone so that she can cross-reference medications that may be administered to such horses, she has learned a costly and painful lesson that she cannot rely on even long-trusted individuals in order to ascertain the condition and treatment of horses that she rides and she will never do so again.
- 2.27 The PR has implemented procedures that the veterinarian and the stable manager must confirm in writing before any treatment of her horses takes place and they also check all treatments on the FEI Clean Sport App for prohibited substances so that no prohibited substances are used.
- 2.28 The PR has started to inform all her friends about the "strict liability principle" and she will insist that the Jordanian NF will make mandatory educational courses for all young riders to help them avoid such a useless nightmare she had to go through.
- 2.29 The PR has in addition agreed and volunteered to participate in education sessions with her NF, and to take courses on the FEI Campus and educate herself on the FEI Clean Sport app/web in order to avoid similar situations in the future.
- 2.30 The FEI does not doubt the fact that the PR is a good person with good intentions and love for her horses, who is in a very difficult situation. The FEI has duly considered the facts and circumstances of the case and compared with similar case law and is satisfied that the PR has fulfilled the requirements for No Significant Fault and Negligence for the rule violation. Especially since, the PR is a young girl who trusted in an experienced veterinarian to perform his duties correctly and in accordance with the rules. The PR had delegated the duties of care to the veterinarian and the stable manager, and trusted them in their work. The fact that she has reviewed the veterinary documents, but had limited knowledge as to what was prohibited and in addition that such record did not contain the use of the banned substance Stanozolol, is factors to be taken into consideration and it can properly be termed as constituting a lesser degree of fault so that the No Significant Fault defence under 10.5.2 can be applied for this case.

2.31 To conclude, when viewed in the totality of the circumstances, the FEI therefore finds it proportionate to impose a seventeen (17) months ineligibility period on the PR.

2.32 Article 10.2 of the EAD Rules provides that a PR for an Articles 2.1 violation should also be fined up to CHF 15,000 '*unless fairness dictates otherwise*' and should be ordered to pay '*appropriate legal costs*'. The parties agree that a fine of 5 000 CHF shall be imposed on the PR, and that the PR be ordered to pay the legal costs of 2 500 CHF. In addition, the Disqualification of the Horse's results at the Event in accordance with Article 9, 10.1.4 and 11 of the EAD Rules should apply.⁷

2C. Conclusions of the Parties

2.33 Based on the evidence and documentation supplied by the PR and the evidence in the case, the parties conclude that source of the Stanozolol and Phenylbutazone in the Horse's sample, was by the injection and treatment of her veterinarian.

2.34 The parties concludes the criteria for the application of Article 10.5.2 of the EAD Rules had been met in that:

(i) the PR has established how the how the Stanozolol and Phenylbutazone entered the Horse's system;

(ii) the PR did not know or suspect, that her veterinarian would inject the Horse with a Banned Substance;

(iii) in consequence, the PR has demonstrated that she bore No Significant Fault or Negligence for the rule violation;

(iiii) the PR, also promptly admitted the rule violation.⁸

2.35 The parties therefore agree that the otherwise applicable period of Ineligibility (i.e. two (2) years) should be reduced to seventeen (17) months period of ineligibility for the PR, starting from the date of the notification.

2.36 As a consequence, Art 7.6.1 of the EAD Rules permits for an agreement between the parties, subject to FEI Tribunal approval."

⁷ In accordance with the FEI Guidelines for Legal Costs available at: https://inside.fei.org/sites/default/files/FEI_Guidelines_Legal_Costs.pdf

⁸ Although this is not applicable for the purpose of Prompt Admission Art 10.6 EADR, since you cannot admit the violation of another person, but it shows her good intentions.

5. Jurisdiction

- 5.1 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.
- 5.2 As a member of the National Federation of Jordan, the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

6. Approval of Agreement

- 6.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has – among others – taken note, that the FEI accepts the PR's explanations for the source of the Prohibited Substances, and that the PR established – on a balance of probability, as required under the EADCMRs – how the Prohibited Substances entered the Horse's system.
- 6.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Significant Fault or Negligence for the rule violation.
- 6.3 It follows from Article 10.5.2 of the EAD Rules, where a PR establishes that she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility (2 years) and other sanctions (apart from Article 9) may be reduced based on the PR's degree of fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable.
- 6.4 However, the Tribunal wishes to clarify that it did not evaluate the degree of fault of the PR, nor did it take into account previous jurisprudence, as it did not enter into the merits of the case.
- 6.5 The Tribunal further also notes that the Agreement between the Parties contains an education requirement by the PR, namely that she has to support the FEI in its anti-doping campaign and to actively engage in anti-doping education.
- 6.6 Finally, from the explanations and evidence submitted, as well as also confirmed by the veterinarian in his statement, it is apparent that an FEI permitted Treating Veterinarian administered a product containing a

Banned Substance to a competition horse. Those substances are prohibited at all times under the FEI Rules and Regulations. The actions of the veterinarian, therefore, seem to also constitute an EAD Rule violation. The Tribunal notes that the FEI has therefore opened separate proceedings against the veterinarian.

- 6.7 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2018/BS23 VENI VIDI VICI.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Huda Kayali, concerning the case 2018/BS23 VENI VIDI VICI is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 4 above are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

IV. DECISION TO BE FORWARDED TO:

- a. The Person Responsible: Yes**
- b. The President of the NF of the Person Responsible: Yes**
- c. The Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to be 'Valérie Horyna', written in a cursive style.

Ms. Valérie Horyna, one member panel