

**DECISION of the FEI TRIBUNAL
dated 23 January 2020**

Controlled Medication Substance Case No.: 2019/FT36

Horse: CONVERSANO XIII-14 **FEI Passport No:** 106AD08/CZE

Person Responsible/NF/ID: Marketa SEDLINSKA/CZE/10168865

Event/ID: CAI3* - H1 – Ksiaz (POL), 2019_CI_1646_A_H1_01

Date: 13-16 June 2019

Prohibited Substance(s): Theobromine

I. COMPOSITION OF PANEL

Mr. José A. Rodriguez Alvarez, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 24th edition, effective 20 November 2018 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019, 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, changes effective 1 January 2019.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes effective 1 January 2019.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Marketa Sedlinska

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."

ECM Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse's* body during an Event without a valid Veterinary Form. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing *Use* be demonstrated in order to establish a *Rule* violation under Article 2.1."

ECM Rules Art. 7.6.1: "In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an anti-doping 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 ECM Rules or (where some discretion as to Consequences exists under these ECM 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. Parties

- 1.1 The Person Responsible ("**PR**"), Ms. Marketa Sedlinska, is a driver for Czech Republic.
- 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. Further proceedings

- 2.1 On 15 January 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2019/FT36 CONVERSANO XIII-14 and submitted the Agreement (together with the Case Summary and the Full Reasoning for the Agreement, as well as the Annexes outlined throughout this Decision) to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EADCMRs.

3. Agreement between Parties

- 3.1 The Parties reached the following Agreement:

*** Quote***

3 NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

- 3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse CONVERSANO XIII-14 (the "Horse") at the CAI3*-H1 in Ksiaz, Poland, from 13 to 16 June 2019 (the "Event"), the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:
- (a) The PR admits the violation of Article 2.1 of the ECM Rules (*The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*); and
 - (b) The PR established on a balance of probabilities how Theobromine entered the Horse's system; and
 - (c) The PR bears no fault or negligence for the Rule Violation and therefore she shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. six months) shall be eliminated; and
 - (d) In accordance with Article 10.8.3 of the ECM Rules, this violation of the ECM Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the ECM Rules;
 - (e) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the

results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;

- (f) The PR shall not incur any fines;
 - (g) No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the ECM Rules) will apply in this case;
 - (h) Each party will bear its own legal and other costs incurred in connection with these proceedings.
- 3.2 This agreement is made in accordance with Article 7.6.1 of the ECM Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the ECM Rules.
- 3.3 The parties acknowledge and agree that, pursuant to Article 13.3 of the ECM Rules, the Decision will be made public by the FEI. 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)

- "2.1 Ms. Marketa Sedlinska (FEI ID 10168865), the Person Responsible ("PR") in accordance with Article 118.3 of the FEI General Regulations, is a driver for Czech Republic.
- 2.2 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 Dressage and Para Driving).
- 2.3 The PR participated with the horse CONVERSANO XIII-14 (FEI ID: 106AD08) (the "Horse") in CAI3*-H1 in Ksiaz, Poland, from 13 to 16 June 2019 (the "Event"). As a member of the Czech Equestrian Federation (the "Czech NF"), the latter being a member of the FEI, the PR was bound by the EADCM Regulations, 2nd edition, changes effective 1 January 2019.

- 2.4 The Horse was selected for testing on 14 June 2019. Blood and urine samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory ("LGC") in Cambridgeshire, UK for analysis.
- 2.5 Analysis of the urine sample revealed the presence of Theobromine, a vasodilator used in the treatment of hypertension and angina. Theobromine is a Controlled Medication Substance under the FEI Equine Prohibited Substances List. Theobromine remaining a Controlled Medication Substance is also designated as a "Specified Substance".
- 2.6 The FEI has with effect from 1 January 2016, amended the EADCMR to introduce the concept of "Specified Substances". The introduction of the category of Specified Substances is to recognize that it is possible for certain substances to enter a Horse's system inadvertently, due to a credible non-doping explanation, and therefore to allow the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a sanctioning decision.
- 2.7 By notification letter dated 18 July 2019, the FEI informed the PR, in her capacity as the Person Responsible, and the Czech NF of a violation of Article 2.1 (The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample) of the FEI Equine Controlled Medication Rules (the "ECMRs") based on the Laboratory's adverse analytical finding of Theobromine in the Horse's Sample collected at the Event. (Exhibit 1)
- 2.8 The proceedings were initiated under the so-called Administrative Procedure (also known as "Fast Track") due to the respective prerequisites under Article 8.3 of the ECM Rules for that type of procedure being fulfilled. The PR did not accept the Administrative sanctions offered to her.
- 2.9 The PR who is also the owner of the Horse was provided with the right to request a B Sample analysis of the positive sample. The PR did not request the B-Sample Analysis to be performed.
- 2.10 The PR provided her written submission, wherein she explained the following: (Exhibit 2-6)
- The PR is a veterinary surgeon and lecturer of Equine Welfare at the Veterinary University in Brno;
 - The PR is an amateur driver and competes with her only mare Conversano XIII-14 with which she has a real partnership;

- The PR has after extensive investigation discovered that the substance in question most likely entered the Horse's system through Musli Probio Feed produced by the manufacturer La Sard;
- The PR had the feed analysed at the Central Institute for Supervising and Testing in Agriculture, National Reference Laboratory, Brno. The analysis confirmed the presence of Theobromine;
- The PR provided invoices attesting the purchase of the feed before the Event;
- The PR as well contacted the regional distributor of the feed who explained that even though they carefully try to keep the proper recipe they cannot completely exclude the possibility of small amount of Theobromine. For this reason, they have now stopped buying the raw material which includes Theobromin and will never use it again in any of their products. The raw material which included Theobromin was never a part of the feed for horses and was originally only used for cows. This situation is accidental and exceptional;
- The PR has since discovering the source of the positive finding switched to another manufacturer of feed which guarantees regular checks of individual batches of feed. The PR bought high-quality feed storage boxes and adjusted the way of storing feed and taking care of her horse during a competition tour. In addition, the horse's medication logbook continues to include batches of medications. The PR and her staff is fundamentally instructed about the rules of contamination prevention;
- The FEI has on its own initiative on 22 November 2019 contacted the regional distributor of the feed in order to clarify how they established that it was the raw material that was the source of Theobromine. The regional distributor replied: "... Only raw material we had on the stock containing theobromine were cocoa husks. We used it for beef cattle feed mainly from economical reason, so we decided not to use it anymore..." (Exhibit 7)
- The FEI acknowledges that Cocoa husks/shells are a known source of theobromine with Theobromine being the most abundant Methylxanthine in cocoa shells, followed by Caffeine and Theophylline.
- The FEI is therefore satisfied that the PR has established, on a balance of probabilities, how Theobromine entered the Horse's system.
- Furthermore, taking into account the totality of circumstances of the case in question, the FEI is of the opinion that the PR did not know or suspect, and could not reasonably have known or suspected even with

the exercise of utmost caution, that the feed was contaminated with a Controlled Medication Substance as no Theobromine or any other ingredient that would indicate the content of Theobromine was listed on the list of ingredients of the feed in question. Therefore the FEI is satisfied that the PR has on a balance of probabilities established that she bore no fault or negligence for the Rule Violation.

- 2.11 Article 7.6.1 of the ECM Rules permits an agreement between the parties, subject to FEI Tribunal approval.”

4. Jurisdiction

- 4.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- 4.2 As a member of the National Federation of the Czech Republic, the latter being a member of the FEI, the PR was bound by the EADCMRs.
- 4.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 4.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

5. Approval of Agreement

- 5.1 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 that the PR has established the source of the Prohibited Substances, namely contaminated feed eaten by the Horse. In this regard, the Tribunal also notes the laboratory results of the feed analysed, as well as the feed producers confirmation that the producer had raw material (cocoa husks) in stock containing theobromine, which it used for beef cattle feed.
- 5.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Fault or Negligence for the rule violation.
- 5.3 Following from Articles 10.4 of the ECM Rules, where a PR establishes that she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility (6 months) and other sanctions (apart from Article 9) may be eliminated.
- 5.4 However, the Tribunal wishes to clarify that it did not evaluate whether the degree of fault of the PR, nor did it take into account previous case law.

5.6 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 as set forth in Article 3 above. Further, this Decision shall terminate the present case 2019/FT36 CONVERSANO XIII-14.

6. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Marketa Sedlinska, concerning the case 2019/FT36 CONVERSANO XIII-14 is hereby - pursuant to Article 7.6.1 of the EADCMRs - approved by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision. Namely, the Parties agreed as outlined in Article 3 above.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM 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 ECM 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



Mr. José A. Rodríguez Álvarez, one member panel