



**DECISION of the FEI TRIBUNAL**

**dated 15 August 2013**

**In the matter of**

**Ms. DANIELLE GOLDSTEIN**

**“the Appellant «**

**vs.**

**FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI”)**

**« the Respondent”**

**I. COMPOSITION OF PANEL**

Prof. Dr. Jens Adolphsen (one member panel)

**II. SUMMARY OF THE FACTS**

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

**2. Case File:** The FEI Tribunal duly took into consideration the Parties’ written submissions received to date and the oral argument presented on 13 August 2013.

**Oral hearing:** 13 August 2013 – FEI Headquarters, Lausanne

Present:

The FEI Tribunal Panel, by video conference  
Ms. Erika Riedl, FEI Tribunal Clerk

For the Appellant:

Ms. Danielle Goldstein, the Appellant  
Mr. Stephan Netzle, Legal Counsel

For the FEI:

Mr. Mikael Rentsch, FEI Legal Director  
Ms. Carolin Fischer, FEI Legal Counsel  
Mr. Francisco Lima, FEI Legal Counsel

Witness:

Mr. John P. Roche, FEI Director Jumping, by phone  
conference

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **1. Articles of the Statutes/Regulations which are applicable or have been infringed:**

Statutes 23<sup>rd</sup> edition, effective 8 November 2012 ("**Statutes**").

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2013 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2<sup>nd</sup> edition, 1 January 2012 ("**IRs**").

FEI Jumping Rules, 24<sup>th</sup> edition, 1 January 2012, updates effective 1 January 2013 ("**JRs**").

FEI Rules for Jumping Championships and Olympic Games, 24<sup>th</sup> edition, 1 January 2012, updates effective 1 January 2013 ("**JRs Chs & OGs**").

#### **2. The relevant Legal Provisions**

**GRs Article 165.1:** "An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):

(...)

1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body."

**GRs Article 116.4:** "4. Entries for any Championship with more than one (1) Discipline and for the FEI World Equestrian Games shall be made following the compulsory three (3) phases outlined under paragraph 4.1, 4.2 and 4.3 below:

4.1. Entries in principle

must reach the OC at least eight (8) weeks before the Event is due to begin. Entry in principle means that an NF has the definite intention of sending Athletes and Horses to participate in the Event. It must state whether the intention is to send only a team or a team and individuals or only individuals.

#### 4.2. Nominated entries

must reach the OC at least four (4) weeks before the Event and must include a list of the names of Athletes and Horses from which the definite entries and any substitutions will be chosen and state the number of Athletes and Horses which the NF intends to send. The number of nominated entries of Athletes and Horses must not exceed twice the number invited in the Schedule or prescribed by the Sport Rules. Once the nominated entries have been sent in, NFs may send fewer Athletes and/or Horses but never more than the number of nominated entries. NFs which are not represented after having made nominated entries and whose excuse is not acceptable to the OC shall be reported by the OC to the Secretary General for consideration of their excuse by the FEI Tribunal.

#### 4.3. Definite entries

must reach the OC at the latest four (4) days preceding the beginning of the Event. These represent the final selection of Athletes and Horses that will travel to the Event. The definite entries may not exceed the number listed and must be chosen from the list of names on the nominated entries. After the definite entries have been sent in, substitutions of Athletes and/or Horses may only be made with the express permission of the OC."

### **IV. DECISION**

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. 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 Panel has 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 The forthcoming FEI European Championships will take place in Herning, Denmark, from 19 – 25 August 2013 (the "2013 European Championships"). The 2013 European Championships will be held in the disciplines of Jumping, Dressage and Para-Dressage. The dispute at issue arose in relation to the entry system for the Jumping competition at the 2013 European Championships.
- 1.2 The entry system for the Jumping competition at the 2013 European Championships has been set out in the Approved Schedule – 2013 European Championships Jumping of 16 May 2013 (the "Approved Schedule"), which was published on the FEI website on 16 May 2013.
- 1.3 In accordance with Article 116 of the GRs, the Approved Schedule foresees a compulsory three phase entry system for the 2013 European Championships. The three phases were comprised of an Entry in

Principle, a Nominated Entry and a Definite Entry. The Approved Schedule further outlined that "All entries must be made through the FEI online entry system....". The Approved Schedule outlined the deadlines below for the respective Entries:

a) Entries in Principle:           Wednesday 27.05.2013

Each nation must declare whether they intend to participate with a team or with individual competitors.

b) Nominated Entries:           Wednesday 03.07.2013

Each NF may enter a maximum of 10 competitors and 20 horses. Each NF must return to the FEI by 3 July one certificate of capability with all nominated Championship athletes and horses included duly signed by the NF.

The name and address of the team veterinarian must be included with the nominated entries.

c) Definite Entries:           Wednesday 17.07.2013

Each NF may enter a maximum of 5 competitors and 10 horses of up to 2 individual competitors with two horses each. All competitors and horses must be chosen from the list of nominated entries.

1.4 On 2 June 2013, Ms. Danielle Goldstein (ISR) ("Ms. Goldstein" or "the Appellant") competed at an Event in Arnhem, the Netherlands - a qualifying event for the 2013 European Championships ("the Arnhem Event"). Due to her performance with the horse ADAMO VAN T STEEPTJE, the Appellant qualified for the 2013 European Championships.

1.5 On 2 July 2013, the Israel Equestrian Federation (the "ISR NF"), on behalf of Ms. Goldstein, attempted to make a Nominated Entry for Ms. Goldstein through the FEI online entry system for the 2013 European Championships.

1.6 The online entry system automatically rejected that application because no Entry in Principle had been made for Ms. Goldstein within the deadline for Entries in Principle.

1.7 By email of 5 July 2013, the FEI confirmed the correctness of that automatic decision (the "Decision").

## **2. Procedural Background**

2.1 On 2 August 2013, Ms. Goldstein lodged an Appeal with the FEI Tribunal ("the Tribunal") against the Decision.

### **3. Appeal by the Appellant**

- 3.1 Together with her Appeal, the Appellant provided a letter and a statement by herself, as well as a letter by the ISR NF, by which the ISR NF explained that it was fully supportive of the Appellant to compete for Israel at the 2013 European Championships. In her statement, the Appellant explained that competing at the 2013 European Championships would help her enormously to continue to build upon what she had already achieved, and to progress her personal objectives and those of the FEI regarding worldwide equestrianism. That further, her objectives included promoting equestrian sports in Israel, providing equestrian education, i.e. through her established equine education program or through teaching clinics worldwide, and to support charitable causes.
- 3.2 As regards the jurisdiction of the Tribunal, the Appellant contended that insofar as the Appeal would raise an issue of interpretation of the Statutes, GRs and Sport Rules, the Tribunal had jurisdiction over the matter in accordance with Article 38(ii) of the Statutes.
- 3.3 In her Appeal, the Appellant accepted that no Entry in Principle had been made for her. She further accepted that pursuant to Article 116.4.1 of the GRs, an Entry in Principle was mandatory. The Appellant however contended that the Decision should not have been made by reference only to the express language of Article 116.4.1 of the GRs, and that the FEI Regulations would have allowed (and indeed required) the FEI to take into account the specific circumstances of the case. Specifically, the Appellant requested that the rather organisational purpose of the Entry in Principle should have been considered. Therefore, the Appellant asked to admit her to the 2013 European Championships despite the lack of a timely Entry in Principle.
- 3.4 Regarding the merits of the Appeal, the Appellant in essence submitted:
- a) That the Decision was (i) inconsistent with the proper interpretation of all relevant regulations, read as a whole; (ii) unfair and discriminatory towards the Appellant and her NF; (iii) inconsistent with the objectives of the FEI as set out in its Statutes; (iv) contrary to the sporting spirit, as referred to in the Preamble to the JRs; and (v) overly formalistic considering the purpose of the relevant provision, which according to the Appellant was of rather organisational nature, as opposed to sporting nature. In this context the Appellant argued that insofar as the Entry in Principle did not require the mention of any names of the respective athlete, the mere purpose of Entries in Principle was for logistical reasons for event organisers.
  - b) That further, she or the ISR NF could not have reasonably or responsibly have made an Entry in Principle for the 2013 European Championships by the deadline of 27 March 2013, as (i) by the end of the deadline for the Entries in Principle no Athlete eligible to compete for Israel had qualified for the 2013 European Championships for the discipline of Jumping; (ii) as the ISR NF had not expected that any Athlete would qualify before the end of the deadline for Nominated Entries, i.e. 3 July

2013. That on or around 26 May 2013, the ISR NF had made an Entry in Principle for the Para-Dressage discipline of the 2013 European Championships, as for that discipline, an Israeli rider had already achieved the required qualification in August 2012.

c) That several FEI Regulations, i.e. Article 116.4.2 of the GRs and Article 251.14 of the JRs, foresaw sanctions for a NF not being represented at an Event after having made Nominated Entries, and that also fines were foreseen for NFs that had made Entries in Principle for an Event and that were not represented by any athletes at that Event. That further, NFs had to provide the FEI by the end of the deadline for the Entries in Principle with a "Certificate of Capability" which established that the Athletes and Horses entered had "the experience and qualification required" to take part in the 2013 European Championships. That the ISR NF could not have signed such certificate for the Appellant by 27 May 2013, as she had not yet qualified for the event by that date.

d) That as a result thereof, the Regulations of the FEI could not be interpreted literally, to require Entries in Principle under all circumstances, as otherwise NFs and athletes, as in the case at hand, were penalised for acting responsibly and in accordance with its obligations regarding entries for events. That further, the requirement of the Entry in Principle would lead to obvious unfairness and discrimination against certain participants in international equestrian sport, namely those NFs (and its athletes) who did not dispose of a large pool of athletes participating at the highest level of the Equestrian sport, such as ISR NF. That therefore only those NFs with a large pool of athletes could easily fulfil the pre-requisite of the "definite intention", as necessary for the Entry in Principle under Article 116.4.1.

e) That in light of the objectives of the Statutes, i.e. Article 1, paragraphs 1.3, 1.8 and 1.9, and the FEI's obligation resulting thereof to not act unfairly and in a discriminatory manner, in cases of exceptional circumstances, the compulsory requirement for an Entry in Principle under Article 116.4 of the GRs had to be waived.

f) Alternatively, that the circumstances in the case at hand would be compelling and truly exceptional, and that these circumstances would not have been specifically provided for in the FEI Regulations, as there was no possibility under the Rules for an NF to make an Entry in Principle unless it had the "definite intention" of sending an athlete to the event in question. However, that the ISR-NF did not have any such intention, as at the time the Appellant's qualification had been only speculative, even if there existed a chance that she would qualify. That therefore, and in accordance with the Preamble of the JRs it was necessary to make the decision in a sporting spirit, by approaching as near as possible the intention of the JRs and of the GRs, that this encouraged the broadest possible competition, and clearly militated in favour of permitting the Athlete to participate. That further, no legitimate interest of any competitor already entered for the 2013 European Championships would be adversely affected if the Appellant was permitted to participate in the Event, as there were no limits regarding the number of participants.

g) That in conclusion, a denial to participate in the 2013 European Championships would be severely damaging for the Appellant personally, and would further be damaging the promotion and development of equestrian sport in Israel.

- 3.5 As a result, the Appellant invited the FEI Tribunal to allow her Appeal, and to order the FEI and the Organising Committee ("the OC") to accept her Nominated Entry, and to take all necessary steps to allow her to compete at the 2013 European Championships.

#### **4. Answer of the FEI**

- 4.1 On 9 August 2013, the FEI provided its answer to the Appeal ("the Answer"). Together with its Answer, the FEI submitted the Approved Schedule for the 2013 European Championships, as well as the Approved Schedule for the Arnhem Event and a document listing the electronic entry logs for the Arnhem Event ("the Arnhem Logs"). According to the Arnhem Logs, Definite Entries had been made for the Appellant for the Arnhem Event on 2 May 2013, and those Definite Entries had been accepted on 23 May 2013. The Approved Schedule for the Arnhem Event contained the information that the Arnhem Event served as qualifying event for the 2013 European Championships.
- 4.2 Regarding jurisdiction of the Tribunal and admissibility of the Appeal the FEI took the position that the jurisdiction of the Tribunal followed from Article 17.1 of the IRs and Article 38 of the Statutes. Further that the Appeal was admissible insofar as the Appellant had a "legitimate interest" in the meaning of Article 165.1 of the GRs, as the Decision concerned her admission to the 2013 European Championships, and that therefore she was entitled to lodge an Appeal with the Tribunal. Finally, the FEI accepted that the Appellant had lodged her Appeal within the deadline foreseen under Article 165.5 of the GRs, and that there were no reasons of inadmissibility in the meaning of Article 165.2 of the GRs.
- 4.3 The FEI requested however that the Appeal be dismissed on the merits, in accordance with Article 20.14.1 of the IRs. In this context the FEI argued that for the Appeal to be successful, the Appellant had to establish to the satisfaction of the FEI Tribunal, by a balance of probabilities, that the Decision did not comply with the FEI Rules and Regulations, and that as a consequence, her rights, in particular, her potential right to compete at the 2013 European Championships, had been violated. That, however, in light of the fact that the Appellant had accepted the mandatory nature of an Entry in Principle, it was entirely inconsistent for her to simultaneously argue that the FEI could have made a different decision.
- 4.4 In essence, the FEI argued:
- a) That the wording of Article 116.4 of the GRs, which set out the requirement of the Entry in Principle and contained the words "must" and "compulsory", was very clear and left no room for any interpretation whatsoever.

- b) That Article 116.4.1 of the GRs did not allow for any exceptions and did not foresee a similar clause as the first paragraph of Article 116 of the GRs, specifically foreseeing an exception by means of the wording "unless compelling circumstances warrant otherwise". The FEI argued that such clause only applied to cases where the athlete had already competed at an Event without having been entered through the online Entry System.
- c) The FEI further contented that an Entry of Principle could have been easily made, and without any risk of any nature, by the ISR NF for the discipline of Jumping. That Entries in Principle were a mere declaration by an NF whether or not it intended to send individuals and/or a team to a specific event, and that no name(s) of (a) specific rider(s) or the number of riders/teams had to be specified. That furthermore it had been irrelevant whether or not the Appellant had already qualified for the 2013 European Championships prior to the deadline for the Entries in Principle, according to the Approved Schedule for that Event it was possible for riders to achieve the required Minimum Eligibility Requirements for the 2013 European Championships (i.e. to qualify for the 2013 European Championships) even until one day prior to the deadline of the Nominated Entries, i.e. until 2 July 2013. The FEI further argued that according to the Approved Schedule for the 2013 European Championship the Certificate of Capability had to be submitted by 3 July 2013 only, and that the purpose of a Certificate of Capability was to establish a record of all results achieved by a rider, and thereby established as to whether or not a rider was qualified to participate in a given event. That therefore, the Appellant's allegation that her case would qualify as amounting to "unforeseen and exceptional circumstances" as foreseen by the Preamble of the JRs could not be admitted. That in light of the fact that the Entries of the Appellant for the Arnhem Event had been accepted on 23 May 2013, she had had the possibility to compete at a qualifying event for the 2013 European Championships, and that furthermore it had been foreseeable for her and the ISR NF, prior to the deadline for the Entries in Principle of 27 May 2013, that she might potentially qualify for the 2013 European Championships at the Arnhem Event. That therefore, and taking into account that according to the Approved Schedule it had been possible to qualify for the 2013 European Championships even after the end of the deadline for the Entries in Principle, it was not excluded, as argued by the Appellant, that the ISR NF could have had the "Definite Intention" of sending an Athlete to compete in the show jumping discipline of the 2013 European Championships prior to the expiration of the deadline for the Entries in Principle, as required under Article 116.4.1 of the GRs.
- d) That Articles 116.4.2 and 116.9 of the GRs only foresaw potential consequences, such as being reported to the FEI Secretary General or limited possibility of substitutions, for failure to comply with the requirement of Nominated Entries and for failure to respect Definite Entries, and not, as alleged by the Appellant, for the failure to respect the requirement of Entries in Principle. That however Article 251.14 of



the JRs however foresaw a fine for NFs making Entries in Principle and then not sending any Athletes to compete. That in accordance with Article 251.14 of the JRs, such fine would however only be imposed on the respective NF "in the absence of a satisfactory explanation". That in the case at hand, as the ISR NF would have had such a "satisfactory explanation" if it had made the Entry in Principle for the jumping discipline within the time limits foreseen, and if, in the end, the Appellant would not have presented herself at that Event because she had not qualified for the 2013 European Championships. That the missing qualification would have been an even more satisfactory explanation as the Approved Schedule for the 2013 European Championships specifically provided for the possibility to qualify for the 2013 European Championships after the expiry of the deadline for the Entries in Principle. Further, that the Approved Schedule contained a note that consequences for cases of withdrawals were only applicable after the Definite Entries had been made.

- e) Finally, that the requirement for Entries in Principle were entirely in line with all FEI Rules and Regulations, as contrary to the allegations of the Appellant, smaller NFs were not disadvantaged compared to bigger NFs. Specifically, that bigger NFs did not have an advantage over smaller NFs insofar as they potentially administered more riders than smaller NFs that had already qualified for the event at the end of the deadline for Entries in Principle, as no such qualification had been necessary for any rider, whether belonging to a smaller or bigger NF, in order to make the Entries in Principle. The FEI further argued in this respect, that the ISR NF had been aware of the deadline of Entries in Principle, and had also generally accepted the necessity of the Entry in Principle, as it had indeed made an Entry in Principle for the Para-Dressage Discipline, within the relevant timeline of 27 May 2013.

- 4.5 As a result, the FEI requested the Tribunal to dismiss the Appeal on the merits in accordance with Article 20.14.1 of the IRs. The FEI further requested the Tribunal to order the Appellant to pay any costs of the proceedings, including a contribution to the legal costs incurred by the FEI, in accordance with Article 20.14.5 of the IRs, and to dismiss any other relief sought by the Appellant.

## **5. Further submissions by the Parties during the Hearing**

- 5.1 During the Hearing, both Parties referred to their written submissions and both Parties accepted the admissibility of the Appeal. It was therefore agreed to limit the Hearing to the question of the merits of the case.
- 5.2 During the Hearing, and upon request by the Tribunal, Mr. John Roche, FEI Director Jumping provided explanations regarding the practical implications of the provision concerning Entries in Principle. Mr. Roche explained that the main purpose of Entries in Principle was to allow organisers to estimate the maximum number of competitors and horses,

in order for them to book hotel rooms and boxes for the horses. Mr. Roche further clarified that it was however possible for a National Federation to organise accommodation for its athletes, at its own expense. Mr. Roche further explained that for the Entry in Principle, it had to be clearly identified whether the intention was to send either a team, or individuals, or both, and that – although the case had not occurred to date – it was not possible to participate with a team in case that Entries in Principle had only been made for individuals. In this respect Mr. Roche further explained that even before the FEI online entry system had been put in place at the beginning of 2013, the requirement for Entries in Principle had been handled very strictly, and that otherwise a “fair play issue” would arise with regard to those National Federations that respected the Rules and complied with the deadline for the Entries in Principle. Mr. Roche concluded that no case comparable to the case at hand had been recorded with the FEI in the past twenty-six years, since he worked with the FEI.

- 5.3 During the Hearing, the Appellant clarified that at the time when she requested the ISR NF to enter her for the Arnhem Event, she had not realised that that Event had been a qualifying event for the 2013 European Championships. That in addition, she had not even considered qualifying for the 2013 European Championships, as she had been convinced that neither her Horse, nor herself would be sufficiently trained to compete in the Grand Prix of the Arnhem Event, which was the qualifying event competition for the 2013 European Championships. That furthermore, she had only realised after the Arnhem Event, and upon request by someone, that she had qualified for the 2013 European Championships.
- 5.4 During the Hearing, the Appellant argued that whereas under Swiss Law sporting federations had a wide discretion in setting up their own Rules, it was however not possible for the FEI to insist on enforcing a rule that had however no meaningful purpose. That the wording of a rule would be the starting point for an interpretation of a rule, but that it was never the only consideration to be made within an interpretation process, and that specific circumstances had to be taken into account. That Rules of sporting federations had to be interpreted in the same manner as legal provisions, and not like contracts, and therefore in good faith for those subjected to the rules, i.e. the members of the sporting federation or the riders, and not in favour of the needs of the drafter of the Rules.
- 5.5 The Appellant further argued that if, as argued by the FEI, the wording of Article 116 of the GRs “unless compelling circumstances demand otherwise” only applied to athletes who had not complied with the entry system at all and still managed to compete at an event, those athletes would be treated more favourably than an athlete for whom the entry system had been used, but who was refused to be admitted because no Entry in Principle had been made. That further, even if the case at hand would not be exceptional, it was a case that had not been foreseen by the Rule makers, and that therefore, the resulting “lacuna” had to be filled in the interest of the sport and sporting competition.

- 5.6 The Appellant also highlighted that according to the Approved Schedule for the 2013 European Championships a deadline of 12 (twelve) weeks prior to the event was foreseen for Entries in Principle, and not 8 (eight) weeks, as set out in Article 116 of the GRs. That however, her communication with the FEI concerning her Entry for the 2013 European Championships had been within the 8 (eight)-week deadline foreseen by the Rules.
- 5.7 The Appellant also argued under Swiss law, there was a distinction between "organisational rules", such as Entries in Principle, and provisions that determined the validity of acts, and that for organisational rules, no sanctions were foreseen. That therefore, it was not fair if the same consequences – i.e. non admission to the event – were imposed on the Appellant for omitting to comply with the requirement of the Entry in Principle, as if she had not met the sporting criteria, i.e. as if she had not qualified for the event at all. That she had simply performed surprisingly well at the Arnhem Event, and therefore unexpectedly met the sporting criteria to participate at the 2013 European Championships. That it would not be proportional to impose such a harsh consequence, namely to prevent her from participating in the 2013 European Championships, for a purely formal omission of the ISR NF, and that for example a fine would be more appropriate in such a case, as foreseen in the case of participation at an event without having complied at all with the Entry requirement.
- 5.8 During the Hearing, the FEI argued that 21 (twenty-one) National Federations were scheduled to participate at the 2013 European Championships, and that all of them had made Entries in Principle within the deadline. The FEI contended that even if the nature of the Entry in Principle Rule was of more organisational means, it had still to be applied. That finally the FEI had to apply its Rules fair and evenly to all riders and to guarantee fair and even conditions.
- 5.9 The FEI further underlined that no exceptional circumstances existed in the case at hand as the Approved Schedule of the 2013 European Championships specifically allowed for athletes to qualify even after the deadline for the Entry in Principle and up until the deadline for the Nominated Entries. Further that it was a very standard practice that athletes qualify for an event only after the end of the deadline for Entries in Principle. The FEI also underlined the importance and relevance of Approved Schedules for an FEI Event, and that according to Article 110.4 of the GRs, every Approved Schedule for an event had to include the dates by which entries had to be received. Finally, the FEI argued that it could be reasonably expected from an athlete, as well as his or her National Federation, that he or she prepared and informed herself on the requirements for qualification and participation at an event, and even more so with regards to a major FEI Championship, such as the 2013 European Championships. That further, communication with the NF of the athlete was required, and that the Appellant had apparently not complied with those requirements.
- 5.10 In addition, the FEI argued that the fact that the FEI online entry system

had only be introduced in 2013 was of no relevance in the case at hand, as even prior to the introduction of the FEI online entry system, the same three-phases of entries as well as respective mandatory deadlines were applied.

- 5.11 Finally, the FEI expressed the view that it was not possible to waive the mandatory requirement of the Entry in Principle simply because it was not considered by the Appellant as serving anything else than organisational purposes. That it was further for the FEI to apply the existing rules, and that in case a rule would not serve a purpose, as alleged by the Appellant, this could only be raised during the review process for that rule, and that any modification of the applicable rules had to be approved by the FEI General Assembly, composed of the representative of the FEI's members, i.e. the National Federations. That National Federations were regularly invited to propose and comment on FEI Rules changes, and that requests or similar had not been made in decades for a change of Article 116 of the GRs.

## **6. Jurisdiction**

- 6.1 The Tribunal has jurisdiction over the matter pursuant to the Statutes, and IRs.

## **7. Admissibility of the Appeal**

- 7.1 The Tribunal finds that the Appeal is admissible, as the Appeal arises from an issue of interpretation of the Statutes, GRs and Sport Rules, and as the Appellant has a "legitimate interest", as required under Article 165.1 of the GRs, as the Decision is relevant with regards to her admission to the 2013 European Championships, and therefore she was entitled to lodge an Appeal. The Tribunal further finds that the Appellant had lodged her Appeal within the deadline foreseen under Article 165.5 of the GRs, and that there were no reasons of inadmissibility in the meaning of Article 165.2 of the GRs. This remains undisputed by the Parties.

## **8. Decision**

- 8.1. In a second step, the Tribunal has to define whether under the FEI Rules it was possible to allow the Appellant to be entered to the 2013 European Championships, despite the undisputedly belated Entry in Principle.
- 8.2 To start with the Tribunal finds that the wording of Article 116.4 of the GRs, which sets out the requirement of the Entry in Principle and contains the word "must", is clear. In this respect, the Tribunal further holds that the necessity for an Entry in Principle also results from the Approved Schedule for the 2013 European Championships.
- 8.3 The Tribunal is further of the opinion that the ISR NF could have

theoretically made such an Entry in Principle, as it was aware of the necessity of this requirement, as it had already made an Entry in Principle for the Para-Dressage discipline for the event. The Tribunal however finds, that if the ISR NF had made a mere speculative Entry in Principle in a situation where no Israeli rider was qualified and nobody – neither the rider nor the NF - expected a rider to qualify, - as it had been the case in the case at hand - the purpose of the Entry in Principle was defied. The Tribunal finds that the Entry in Principle, as confirmed by Mr. Roche during the Hearing, has mainly organisational purposes, as it is intended to provide organisers with a rather rough estimation of the maximum number of competitors and horses that may potentially compete at a given event. In the view of the Tribunal, the requirement of the Entry in Principle has obviously no sporting character.

- 8.4 As a result, the Tribunal finds that the wording of Article 116 of the GRs must be interpreted in the light of the Sports Rules. The Tribunal further holds that the wording of a rule is not the limit for its interpretation, but the starting point. Moreover the Tribunal finds that the case at hand was not a routine case, but an extraordinary case, and further finds that the three phase entry system is absolutely appropriate in routine cases, but not in extraordinary cases. The Tribunal finds that the ISR NF acted responsibly and in accordance with its obligations as at the time of the deadline of the Entry in Principle, as it had no definite intention to send a rider. The rules have not foreseen this case that can only happen because the qualification can be achieved after the Entry in Principle. In the view of the Tribunal, the rules have not foreseen a case like the case at hand, and the Tribunal finds that such case only arose as FEI Rules allowed athletes and horse to achieve qualification to events, such as the 2013 European Championships, after the deadline for the Entry in Principle.
- 8.5 The Tribunal therefore finds, that, as the rules do not foresee such a case, this gap has to be closed. In accordance with the Preamble of the JRs, the Tribunal finds that it was the duty of the relevant body to reach a decision in a sporting spirit, by approaching as closely as possible the intention of the JRs and of the GRs. The Tribunal further holds that according to Articles 1.3 and 1.8 of the Statutes, one of the objective of the FEI is it to enable individual Athletes and teams from different nations to compete in International Events under fair and even conditions, and to promote equestrianism in all its forms and to encourage the development of the FEI Equestrian Disciplines throughout the world.
- 8.6 Accordingly, the Tribunal holds that a decision other than admitting the Appellant to the 2013 European Championships would be contrary to these objectives and overly formalistic. The Tribunal finds, since no comparable case to the case at hand existed in the past, there was still a level playing field and no NF or rider in he past have been treated differently. The Tribunal further holds that allowing the Appellant to participate at the 2013 European Championships does not harm other competitors or those NFs, which had followed the entry requirements, as the number of competitors at the 2013 European Championships is not limited. The Tribunal further holds, that it is not over-demanding for the

OC of the 2013 European Championships to allow the Appellant to participate, as the Entry in Principle only offers a rough basis for the calculation of the number of participants, and as the number of entries made throughout the phases of the entry system is getting smaller and smaller.

8.7. For the above reasons, the Tribunal decides as follows:

- 1) The Appeal is allowed.
- 2) The FEI and the OC of the 2013 European Championships are to accept the Nominated Entry of the ISR NF for the Appellant, and to take all necessary steps to allow her to compete at the 2013 European Championships.
- 3) The Parties are to bear their own costs and expenses.

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

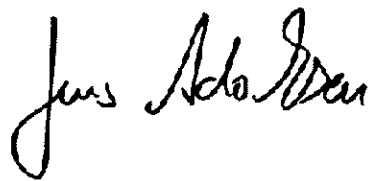
8.9. According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within 30 days of the present notification.

**V. DECISION TO BE FORWARDED TO:**

**a. The Parties: Yes**

**b. Any other: ISR NF, OC of the 2013 European Championships**

**FOR THE PANEL**

A handwritten signature in black ink, reading "Jens Adolphsen", is written over a horizontal line. A vertical line is drawn to the right of the signature, extending from the top of the signature down to the bottom of the page.

**One member panel, Prof. Dr. Jens Adolphsen**