

DECISION of the FEI TRIBUNAL

dated 1 September 2021

in the matter of

Mr Diego PEREZ

(FEI Case number: FEI 2019/CM16 – CASANOVA)

FEI Tribunal Hearing Panel:

Mr Mohammed Al-Saberi (UAE), one-member panel

FEI Tribunal Reference: C21-0019 [2019/CM16]

Person Responsible/ID/NF: Diego PEREZ/10140282/COL

Horse/Passport/NF: CASANOVA/105VB60/COL

Event/ID: CDI1* - Cali (COL) /2019_CI_1438_D_S_01

Date of Event: 02-05.05.2019

Prohibited Substance(s): Caffeine, Theobromine

Bar Code Nos.: 5584462

I. SUMMARY OF LEGAL AUTHORITY

A. Articles of the Statutes/Regulations which are, *inter alia*, applicable:

Statutes 24th edition, effective 19 November 2019 (“**Statutes**”), Arts. 1.5, 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’s Equine Anti-Doping and Controlled Medication Rules, Based upon the 2015 WADA Code, changes effective 1 January 2019 (“**EADCM Rules**”).

The World Anti-Doping Code - International Standard – Prohibited List – January 2019 (“**WADA Prohibited List**”).

B. **Person Responsible:** Mr Diego PEREZ.

C. **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.”

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* may be considered additionally responsible under this Article and 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. 10.2: “The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.5 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6. A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Controlled Medication violation.”

II. Factual background

1. Mr Diego PEREZ (FEI ID 10140282), the Person Responsible (“**the PR**”) and Dressage Athlete for Colombia, competed with the Horse CASANOVA (“**the Horse**”) at the CDI1* in Cali, Colombia, between 2 and 5 May 2019 (“**the Event**”).
2. The Fédération Equestre Internationale (“**the FEI**” 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).
3. At the occasion of the Event, the Horse was tested, and returned a positive result for Caffeine and Theobromine, which both are Controlled Medication Substances under the FEI’s Equine Prohibited Substances List effective 1 January 2019. Specifically, Caffeine is a stimulant, which stimulates the central nervous system. Theobromine is a vasodilator used in the treatment of hypertension and angina and can be a metabolite of Caffeine. Both Caffeine and Theobromine are designated as “Specified Substances”.
4. The positive finding of Caffeine and Theobromine in the Horse’s sample gave rise to a Controlled Medication Rule Violation – as no Veterinary Form was submitted for the use of the Specified Substances – under the FEI Equine Anti-Doping and Controlled Medication Regulations (“**EADCMRs**”).
5. By way of a notification letter dated 20 June 2019, the FEI informed the PR of a possible 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 ECM Rules**”).
6. On 20 June 2019, the FEI Legal Department officially notified the PR and the Colombian Equestrian Federation (“**COL-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 ECM Rules, based on the Laboratory’s Adverse Analytical Finding of Caffeine and Theobromine in the Horse’s Sample collected at the Event and the potential consequences (the “**Notification Letter**”).

7. The PR was not provisionally suspended, since the Prohibited Substances found on the Horse's sample were Specified Substances (cf. Article 7.4.1 of the ECM Rules).
8. The PR and the Owner of the Horse chose to have the B Sample analysis performed, which confirmed the presence of Caffeine and Theobromine.
9. The PR submitted his position to the FEI on 29 August 2019, which will be addressed *infra*, under Section IV.

III. Procedural background in front of the FEI Tribunal

10. By email dated 1 April 2021, the FEI submitted its Response to the Tribunal and requested for the appointment of a hearing panel for the adjudication of the case.
11. On 16 April 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate this case. The Parties were asked to provide any objections to the constitution of the hearing panel by 20 April 2021.
12. On 20 April 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
13. On 7 May 2021, the PR submitted his position in response to the FEI's case files, which will be summarised below, under Section V.
14. On 10 May 2021, the FEI informed the Tribunal that it did not deem a hearing to be necessary in the present matter.
15. No further position was submitted, and neither Party requested for a hearing to take place.

IV. The Parties' Submissions

A. The Submission of the PR:

16. The PR submitted his position in the context of the FEI proceedings, on 29 August 2019. He completed it in the context of the Tribunal proceedings on 7 May 2021.

17. The PR's submission dated 29 August 2019 can be summarized as follows.

- a) The Horse had to be transported from Bogotá, where it stayed, to Cali, four days before the start of the Event. During the transport, which lasted between 16 and 18 hours, the Horse consumed only damped hay, and no liquids. Upon arriving in Cali, the Horse faced various changes, including weather, feeding, groom, stall, etc. Specifically, with respect to the bedding and feeding, the components vary, and are not known from the rider.
- b) When it arrived in Cali, the Horse accessed initially a stall adapted for polo horses, whose bedding was composed of sugar cane bagasse instead of sawdust. The feeding administered to the Horse, hay and alfalfa, and which was apparently also given to the other horses, comes from a region publicly known as being a coffee producer zone. In the PR's view, food, the environment and even the water must have certain caffeine and other derivatives concentration. This concentration would however only be seen in blood samples, and not in urine samples.
- c) During the Horse's stay, there was no security, nor control of the people accessing the horses, meaning that all horses could be visited, pet or fed by anyone with access to the club. In other words, horses have direct contact not only with riders, trainers and grooms but also, among others, with visitors, guests, familiars and friends of the club's members.
- d) In this sense, the PR alleges that the stalls where the horses remained were not disinfected, and there were no pertinent security measures to avoid any influence from third parties.
- e) In Colombia, the possibility of horses being contaminated with caffeine is highly probable, given the abundant coffee-tree farming and coffee production, combined with the warm climate existing in Cali. The hay is harvested from different parts of the country where coffee is grown and whose organic waste could, as indeed they are, be used as fertilizers in hay crops, as they are produced in the same climatic zones and regions, which may also lead to the conclusion that this is another means by which the horse could have consumed this substance.
- f) The Horse is a highly tempered, nervous, and energetic animal, whose work has been focused, other than the regular dressage training, in pacifying its temper and high energy levels. The Horse was destined to compete in show-jumping, but given its hyperactivity and difficulty to handle, in addition to

spectacular gaits and flashy movements, it was decided to show it in dressage in order to focus its energy and capacity into a relaxed yet competitive way of sporting, reason by which, using stimulants of any kind has never been an option by both the PR nor the people in charge.

- g) While the Horse has been under the care of the same groom for the past five years, together with the constant supervision of the PR and the veterinary doctor, a change had been made for the Event, and another groom took care of the Horse at this occasion.
- h) Should the PR be sanctioned with a Period of Ineligibility, he would become unemployed, because practising the equestrian sport is his only source of work.
- i) The PR further admitted that there is no explanation as to how the substance entered the body of the Horse, but that in any event, he did not intentionally supply the Prohibited Substances to the Horse.
- j) In support of his position, the PR submitted a letter from the Horse's treating veterinarian, explaining the Horse's diet. In this sense, the Veterinarian attested that the Horse has a stressed temperament and has a lot of energy, which is why the vitamin supply was restricted. Due to its energy level, the Horse does not require any enhancements such as stimulants (e.g. Caffeine).
- k) The PE further submitted his sports history with the Horse, and a video of the Horse, showing its temper and explosiveness.
- l) In conclusion, the PR requests to be exempted from any guilt, or to have a conciliatory agreement consisting of a fine taking into account his economic possibilities.

18. The PR's submission dated 7 May 2021 can be summarized as follows.

- a) The PR confirmed his previous position. The Adverse Analytical finding of Caffeine is due to environmental factors, the precariousness of the existing technology in Colombia for the analysis of the samples of the concentrates, the collection of the food and the inputs that maintain the horses.
- b) The PR reiterated that coffee is the main product of cultivation and exportation present in the whole Colombian territory, and its presence is impossible to avoid in the production of inputs and raw material for the nutrition of the

horses.

- c) The PR's submission focused mostly on the chemical composition of Coffee, and the active principles to be found therein. It is the PR's view that Coffee should be considered "functional food", which means that it is consumed as part of the normal diet, but with some biologically active components that provide health benefits and reduce the risk of disease. The PR provided an analysis of Caffeine, as a methylxanthine, which would be derived from nucleic acids.
- d) The PR finally reiterated his conclusions already submitted in the context of the FEI proceedings, i.e. concluding that he should not be found guilty of any violation, and otherwise he would propose a conciliatory agreement limited to a monetary compensation according to his economic situation.

B. Written Response by the FEI:

- 19. On 1 April 2021, the FEI provided its Response in this case.
- 20. The FEI submitted that:
 - a) Article 3.1 of the ECM Rules makes it the FEI's burden to establish all the elements of the ECM Rule violation, to the comfortable satisfaction of the Tribunal.
 - b) The elements of Article 2.1 of an ECM Rule violation are straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1"*. Instead, it is a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the A sample analysis confirmed the presence of Caffeine and Theobromine, which are Controlled Medication Substances, and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. The B Sample analysis confirmed the results of the A Sample. Therefore, the FEI submitted that it has discharged its burden of establishing that the PR violated Article 2.1 of the ECM Rules.
 - c) Article 10.2 of the ECM Rules provides that a Person Responsible with no previous doping and/or Controlled Medication offences, but who violates Article 2.1 of the ECM Rules, is subject to a period of Ineligibility of six (6) months, unless he can rebut the presumption of fault on a balance of probability (Article 3.1 of the ECM

Rules). If the PR fail to do so, the six (6) months period of Ineligibility applies.

- d) To rebut the presumption of fault, the ECM Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement that the PR proves how the Prohibited Substances entered the Horse's system before making any plea of No (or No Significant) Fault or Negligence. Indeed, this threshold requirement is strictly applied because without such proof, it would be impossible to assess the degree of Fault or Negligence (or No Significant Fault or Negligence) of the PR for the presence of the Prohibited Substances in the Horse.
- e) In this case, the FEI submitted that the PR did not provide a substantiated explanation on how Caffeine and Theobromine entered the Horse's body. The PR did not establish a causal link between the risks of contamination in this particular region and the Adverse Analytical Finding. Therefore, the FEI submitted that the PR did not establish how the Prohibited Substances entered the Horse's body.
- f) The FEI submitted that the PR failed to establish, on a balance of probability, the "threshold requirement" of how the Prohibited Substances entered the Horse's body. Since it was not possible to evaluate the PR's degree of Fault or Negligence, the FEI further submitted that Article 10.2 of the ECM Rules, which imposes a period of Ineligibility of six (6) months and a fine of up to CHF 15,000, applies.
- g) In view of the above, the FEI recommended a period of Ineligibility of six (6) months be imposed on the PR.
- h) The FEI further acknowledges that there has been substantial delay in processing the present case, delay which is not attributable to the PR. The FEI leaves it to the Tribunal's discretion to determine whether Art. 10.10.2 of the ECM Rules should apply, which state that "Where there have been substantial delays in the hearing process or other aspects of Medication Control not attributable to the Person Responsible and/or member of the Support Personnel alleged to have committed the Rule violation, the Hearing Panel may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another ECM Rule violation last occurred. All competitive results achieved during the period of Ineligibility including retroactive Ineligibility shall be Disqualified". Should the Tribunal apply this provision, all results achieved by the PR from the start of the Period of Ineligibility until the date of the Tribunal's decision shall be disqualified.
- i) On the disqualification of results, the FEI submitted that Article 9 of the ECM Rules, in conjunction with Article 10.1.2 ECM Rules, should apply, *i.e.*, that all

individual results obtained in connection with an Event, should be forfeited.

- j) On the fine to be imposed, the FEI submitted that Article 10.2. of the ECM Rules provides that, for a violation of Article 2.1 ECM Rules, a fine of up to CHF 15,000 and appropriate legal costs shall also be imposed. The FEI Guidelines for fines and contributions towards legal costs provide additional guidance on the appropriate fines and legal costs for Controlled Medication and Banned Substance cases taking into account the level of Fault/Negligence, multiple violations, aggravating circumstances, if present etc. For Specified Substances cases involving Controlled Medication Substances, the fine ranges between 0 and CHF 1,500.
- k) On the costs of the proceedings, the FEI submitted that the PR should be ordered to pay appropriate legal costs, which the FEI submitted should range between CHF 1,000 and CHF 5,000.
- l) The FEI requested the following prayers for relief:
 - (i) *upholding the charge that the PR has violated Article 2.1 of the ECM Rules;*
 - (ii) *disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the ECM Rules;*
 - (iii) *imposing a period of Ineligibility of six (6) months on the PR, commencing from the date of the Final Decision;*
 - (iv) *fining the PR in the amount of 1'500 CHF; and*
 - (v) *ordering the PR to pay the costs of the B Sample analysis in the amount of 1'000 CHF; and*
 - (vi) *ordering the PR to pay the legal costs of 1'500 CHF that the FEI has incurred in these proceedings.*

V. Jurisdiction

21. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the ECN Rules and Article 18 of the IRs. The PR is a member of the COL-NF, which is a member of the FEI; therefore, the PR is bound by the ECM Rules.

VI. The Decision

22. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

1. The Person Responsible

23. The PR is the Person Responsible for the Horse pursuant to Article 118.3 of the GRs as he was the Horse's rider at the Event.

2. Considering

24. The Horse's sample confirmed the presence of two Controlled Medication Substances. As set forth in Article 2.1 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Prohibited Substance in the Horse's sample. The Tribunal is satisfied that the reports relating to the A-sample and the B-sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is further satisfied that the test results evidence the presence of Caffeine and Theobromine in the A Sample taken from the Horse at the Event, and later on in the B Sample analysed. Caffeine and Theobromine are Controlled Medication Substances and the presence of these substances in a Horse's body during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
25. As a result, the FEI has established an AAF and sufficiently proven the objective elements of the offence in accordance with Article 3.1 of the ECM Rules.
26. Pursuant to Article 10.2.1 of the ECM Rules, the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Controlled Medication Substance in a Horse's sample, as in this case, is six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.4 or 10.5 of the ECM Rules.
27. In cases brought under the ECM Rules, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, a PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "*No Significant Fault or Negligence*," as set forth in Article 10.5 of the ECM Rules.

28. In order for Articles 10.4 and 10.5 of the ECM Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
29. As confirmed by various CAS panels as well as FEI Tribunals, the PR has to present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the PR. The PR's scenario has to reach a 51% threshold for it to be successful.¹
30. The PR submitted a statement, including some evidence, in the forms of a letter from the Horse's veterinarian, as well as a letter from the COL-NF and a video of his performances. However, the evidence submitted by the PR does not come to be considered as sufficient to corroborate his allegations. In particular, the COL-NF letter merely confirms that the PR does not have any history of anti-doping violations. The Veterinarian's letter, while confirming the PR's theory by means of which the Horse would not require additional Caffeine, does not bring any elements permitting to confirm how the Prohibited Substances entered the Horse's body. The PR's theory is therefore to be considered as mere speculation, without any supporting evidence.
31. The PR himself admits that there is no explanation as to how the Prohibited Substance entered the Horse's body, further indicating that he however did not intentionally give Caffeine to his Horse and was not aware of it. Therefore, the Tribunal cannot conclude that the PR established how the Controlled Medication entered the Horse's body.
32. Where the first hurdle has not been met, i.e., establishing the source of the Prohibited Substance, the Tribunal cannot continue with the second step and evaluate the PR's degree of Fault or Negligence. Therefore, the Tribunal finds that the PR is not entitled to any reduction of the otherwise applicable period of Ineligibility under Articles 10.4 and 10.5 of the ECM Rules.
33. The Tribunal finds that the applicable period of Ineligibility to be imposed on the PR is six (6) months pursuant to Article 10.2 of the ECM Rules.
34. The Tribunal notes the delay in the prosecution and the submission of the present case. The offence was detected in May 2019, the PR was notified of the Rule Violation in June 2019 and submitted his statement in August 2019. The case was

¹ See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", *Asser International Sports Law Series*, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also Case 2017/BS32 SAURA DE FONDCOMBE, Final Tribunal Decision dated 24 February 2020.

passed for adjudication to the FEI Tribunal in April 2021, i.e. almost two years after the Rule Violation took place. The FEI acknowledged this delay, which is not attributable to the PR.

35. Due to this unjustified delay, the Tribunal holds that Art. 10.10.2 of the ECM Rules (*Delays not attributable to the Person Responsible and/or member of the Support Personnel*), should be applied in the present case, resulting on the Period of Ineligibility to start at an earlier date, i.e. three months before the date of notification of the present decision. All competitive results achieved by the PR during the retroactive Period of Ineligibility shall be disqualified.

VII. Disqualification of Results

36. Since an ECM Rule has been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the ECM Rules.

VIII. Fine & legal costs

37. The Tribunal agrees with the FEI's recommendations for fines as well as legal costs, including the costs of the B Sample Analysis. With respect to this latest point, the Tribunal notes that the PR acknowledged, in his B Sample Analysis Request, that he would need to pay the costs of the B Sample analysis, should the positive finding of the A Sample be confirmed.

IX. Operative part of the Decision

38. In summary, the Tribunal imposes the following sanctions in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
 - a) The Tribunal upholds the charge that the PR violated Article 2.1 of the ECM Rules.
 - b) The Tribunal disqualifies the results of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the ECM Rules.
 - c) The PR bears fault for the Rule Violation and the applicable Period of Ineligibility shall be six (6) months.

- d) The Period of Ineligibility shall commence three months before the date of the Final Decision of the FEI Tribunal in accordance with Art. 10.10.2 of the ECM Rules;
 - e) Therefore, the PR will be ineligible **until 30 November 2021**.
 - f) All competitive results achieved by the PR during the retroactive Period of Ineligibility shall be disqualified with all resulting consequences, including forfeiture of any related medals, points and prizes in accordance with Art. 10.10.2 of the ECM Rules.
 - g) The PR is fined **one thousand five hundred Swiss Francs (CHF 1 500)**.
 - h) The PR shall pay the costs of the B Sample analysis in the amount of **one thousand Swiss Francs (CHF 1 000)**.
 - i) The PR shall pay legal costs of **one thousand five hundred Swiss Francs (CHF 1 500)** that the FEI has incurred in these proceedings.
39. No PR who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a competition or activity that is authorised or organised by the FEI or any National Federation or be present at an event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in competitions authorized or organized by any international or national-level event organisation (Article 10.11.1 of the ECM Rules).
40. Where a Person Responsible who has been declared Ineligible violates any of the conditions in the previous paragraph during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.2 of the ECM Rules).
41. According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
42. In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of its receipt.

X. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The NF of the PR: Yes
- c. Any other: No

FOR THE TRIBUNAL

A handwritten signature in blue ink, consisting of a large, stylized 'S' or 'M' shape with a horizontal line crossing through it.

Mr Mohamed Al-Saberi, One-Member Panel