Arbitration CAS 2020/A/7215 & 7232 Andrea Herck, Mathilda Karlsson & Sri Lanka Equestrian Association (SRI-NF) v. Fédération Equestre Internationale (FEI), award of 19 April 2021

Panel: Ms Annett Rombach (Germany), President; Mr Daniel Ratushny (Canada); Mr Jacques Radoux (Luxembourg)

Equestrian (jumping)
Removal from calendar of competitions awarding olympic ranking points
Decision ex aequo et bono in appeal proceedings
Right to request a public hearing
Powers of the FEI Secretary General to retroactively remove an event or competition from the calendar
Justified circumstances for a retroactive removal
Authority to retroactively remove an event within FEI's control

1. **A CAS panel may be authorized by the parties to decide a dispute ex aequo et bono under CAS's Ordinary Arbitration Procedure (Article R45 CAS Code). This option does, however, not exist for appeal proceedings before the CAS. For appeal proceedings, Article R58 CAS Code provides that the CAS panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the CAS panel deems appropriate.**

2. **Neither the CAS Code nor Article 6 (1) of the European Convention on Human Rights provide a basis for a request for a public hearing. Article R57 CAS Code provides that a public hearing may be requested in appeal proceedings by a physical person only when the dispute is of a "disciplinary nature". A dispute is of a "disciplinary nature" if it sanctions a behaviour in violation of statutes or rules of a federation. The object of disciplinary proceedings is an individual (mis)behaviour by an athlete or other person. If a decision consists in the rectification of an administrative mistake made by the competent sports bodies, but athletes have neither been sanctioned nor have they been the subject of disciplinary investigations addressing their individual behaviour, the decision is entirely disconnected from the behaviour or individual actions of the athletes, even if it may affect them as a side effect. As a result, such dispute cannot be characterized as a disciplinary matter and there is no right to a public hearing. The European Court of Human Rights also clearly restricts the right to request a public hearing to disciplinary or ethical matters.**

3. **Article 112.3 of the FEI General Regulations (GRs) gives the FEI Secretary General's competence *"to remove any Competition and/or Event from the Calendar if justified circumstances relating to a Competition or the Event are established".* It is a question**

of interpretation whether or not the FEI Secretary General's power to remove an event or competition can be exercised only *before* or also *after* the event or competition has been held (retroactively). The wording of Article 112.3 of the FEI GRs, in particular the words "to remove", does not speak against the retrospective removal of an event or competition. Moreover, FEI's intent to include retroactive removal was expressly explained in a memorandum prepared by the FEI for distribution to the National Federations in advance of the ratification of the amendments to Article 112.3 of the FEI GRs and therefore sufficiently transparent for all stakeholders. Finally, the provision was inserted into the FEI GRs primarily as a measure to safeguard FEI's events and competitions against rule violations going to the integrity of the event or competition, e.g. bribery or betting. Hence, a broad interpretation of Article 112.3 of the FEI GRs serves the integrity-driven rationale of Article 112.3 of the FEI GRs as well as the principal goal of the FEI to have athletes and team *"compete against each other under fair and equal conditions"* (Article 110 of the FEI GRs).

4. **Only an irregularity, i.e. a rule violation, may justify a retroactive removal of a competition under Article 112.3 of the FEI GRs. An event that has been held in full compliance with the law and with the FEI's rules and regulations may *per se* not become the subject of a subsequent removal for "justified circumstances". This follows from the integrity-driven rationale of Article 112.3 of the FEI GRs, the inception of which intended to expand the FEI Secretary General's authority to remove events from the calendar *"if rule violations going to the integrity of the Event are established"*. The "integrity" of the event refers to the IOC's "focus on integrity" and the "Model Rules on Betting and Anti-Corruption" provided to the federations by the Association of Summer Olympic International Federations (ASOIF). The spirit of integrity means that events and competitions be shielded against manipulation and corruption, i.e. against any actions which jeopardize the most basic idea of fair competition, level playing field and equality. Not every infringement of the rules is necessarily an attack on the integrity of an event in that sense. As a result, at least as far as events are concerned which have already been held, the FEI's responsibility to establish justified circumstances entails more than the proof of a simple rule violation. Importantly, it is also part of the integrity of an event that (barring specific exceptions such as bad faith or arbitrariness) its outcome need not be disrupted by litigation before courts of law or arbitration bodies.**

5. **It is not within the rationale of Article 112.3 of the FEI GRs to allow for a retroactive removal of an event to the extent that compliance of such event with the applicable rules and regulations is within FEI's control. Rather, the purpose of Article 112.3 of the FEI GRs is to equip the FEI Secretary General with an effective instrument to intervene when he or she becomes aware of circumstances jeopardizing the integrity of an event without the FEI having had any chance to prevent such circumstances before or during the affected event. If the rule violation was caused by the FEI's own negligence, the FEI Secretary General's does not have the authority to retroactively remove the event concerned.**

I. THE PARTIES

1. Mr. Andrea Herck ("Mr. Herck" or the "First Appellant") is a registered show jumper of Romanian nationality and member of the Equestrian Federation of Romania.

2. Ms. Mathilda Karlsson ("Ms. Karlsson") is a registered show jumper of Sri Lankan nationality and member of the Sri Lanka Equestrian Federation.

3. The Sri Lanka Equestrian Federation (the "SRI-NF", and together with Ms. Karlsson the "Second Appellants") is the national governing body of equestrian sport in Sri Lanka and member of the Fédération Equestre Internationale.

4. The Fédération Equestre Internationale (the "FEI" or the "Respondent") is a Swiss law association established in accordance with Articles 60 *et seq.* of the Swiss Civil Code ("SCC"), headquartered in Lausanne, Switzerland. It is the sole IOC recognized international governing body for the equestrian sport disciplines of dressage, jumping, eventing, driving, endurance, vaulting, reining and para-equestrian. Its members are the National Federations ("NFs") of the sport.

5. Mr. Herck, Ms. Karlsson and the SRI-NF are collectively referred to as the "Appellants". The Appellants and the FEI are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations 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 submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

7. The present dispute arises out of the FEI Secretary General's decision to retrospectively remove from the FEI Calendar certain show jumping competitions, awarding Longines/Olympic Ranking points, which were part of the FEI events that took place in December 2019 and January 2020 in Villeneuve-Loubet (FRA). As a result of the removal of these competitions, Mr. Herck and Ms. Karlsson lost the Longines/Olympic Ranking Points they had respectively earned at these competitions, and Ms. Karlsson dropped down in the Olympic Rankings of her group and lost the Olympic quota place she had gained for the SRI-NF.

8. The six events in which Mr. Herck and Ms. Karlsson competed, and which are central to these proceedings (together the "Villeneuve-Loubet Events"), took place on the following dates:

    - 13-15 December 2019
    - 20-22 December 2019

- 27-29 December 2019 (collectively the "December Villeneuve-Loubet Events"), and
- 3-5 January 2020
- 10-12 January 2020
- 23-26 January 2020 (collectively the "January Villeneuve-Loubet Events").

9. The Villeneuve-Loubet Events were organized by the First Appellant's father and legal representative in these proceedings, Mr. André Herck (the "Organizer"). It is the FEI's view that the competitions of the Villeneuve-Loubet Events at issue in this arbitration had to be annulled by the FEI Secretary General because the Organizer had added, to the schedules of these competitions, Longines/Olympic Ranking classes after the definite entries deadline. Because of this alleged irregularity, the Organizer – in the FEI's view – ensured that only those athletes "handpicked" by him would have the opportunity to earn valuable Longines Ranking and Olympic Ranking points, to the exclusion of others. The FEI maintains that the FEI Secretary General had to remove the affected competitions to ensure the principles of fairness, a level playing field and the integrity of the Longines Rankings and the Olympic Rankings for all FEI Jumping athletes.

10. The matrix of invitation systems, Longines and Olympic Ranking points, approval of schedules, entries etc. that applies to FEI jumping events (such as the Villeneuve-Loubet Events) is complex. The key points of this matrix, which are relevant for the decision of this dispute and in particular for the question of whether *"justified circumstances"* existed which permitted the FEI Secretary General's decision to remove certain competitions from the calendar, shall be briefly summarized immediately below.

11. FEI Jumping Events (CSIs – *"Concours de Saut d'Obstacles International"*) for senior athletes are categorized according to their star (*) level, with CSI 1* being the lowest level and CSI 5* being the highest level. The total prize money of a CSI is one of the factors which determines the applicable star level. The details of the categorization of FEI Jumping Events are set out in the FEI Jumping Rules (the "FEI JRs"). The Villeneuve-Loubet Events fell in the CSI 2* category. For CSI 2* Events, the applicable prize money range is from CHF 50,000 to 149,999 (or EUR 41,400 to EUR 124,499).

12. In addition to the CSI star categorization, the prize money offered for an event is also relevant for the number of Longines Ranking points (if any) a participant may earn at a competition. The Longines Ranking points count for the Olympic Ranking, under which a total of 15 individual quota places are allocated to National Olympic Committees (the "NOC") which have not already earned a team quota place (such as the NOC of Sri Lanka). The details of the Olympic Ranking and the allocation of individual quota places are set out in FEI's Qualification System provided to the IOC on 28 January 2019.

13. Not every CSI competition counts for Longines Ranking points, and not every competition is, consequently, relevant for the Olympic Ranking. Individual competitions such as the Villeneuve-Loubet Events are categorized into 8 groups from "AA" to "G", depending on the prize money offered in the relevant competition and the height level of the obstacles in each of

the relevant groups (see the FEI's 2019 and 2020 Rules for the Longines Rankings). As a simple "rule of thumb", the higher the prize money, the more Longines Ranking points can be earned.

14. The total prize money offered for each of the Villeneuve-Loubet Events was, according to the schedules initially set up by the Organizer (hereinafter the "Initial Schedules"), EUR 41,400 (the minimum amount for the events to qualify as CSI 2* events). This prize money was below the minimum amount to qualify these competitions for Longines Ranking points. The Initial Schedules (which did, accordingly, not include any Longines or Olympic Ranking competitions) were sent to the French Equestrian Federation ("FFE") and to the FEI for approval. The schedule of an event sets out all the key information regarding that event, for example, type of event, description of individual competitions (identifying any competitions that count for Longines Ranking points), prizes, trophies to be awarded, height & spread of jumps, list of officials, programme of competitions, accommodation & transport arrangements, definite entries date, the NFs that are invited (if the invitations are limited to certain NFs), the maximum number of entries (if there is a cap).

15. The FFE and, subsequently, the FEI approved the Initial Schedules (without any Longines competitions) on the following dates:

Villeneuve-Loubet Event	**Initial Schedule approved by FEI**
13-15 December 2019	27 September 2019
20-22 December 2019	1 October 2019
27-29 December 2019	1 October 2019
3-5 January 2020	15 November 2019
10-12 January 2020	15 November 2019
23-26 January 2020	3 December 2019

16. The approved Initial Schedules listed, as part of the *"General Conditions"*, the applicable FEI statutes, rules and regulations, the approval date, and the following note (in bold):

"NB: No modifications to the approved Schedule will be approved less than two weeks prior to the event".

17. The standard cover message used by the FEI to communicate the approval of the Initial Schedules was the following (by way of example, the Panel refers to the e-mail sent by the FEI to the FFE with respect to the Villeneuve-Loubet Event that took place between 13 and 15 December 2019):

"Please find attached to this mail, the approved schedule for the above mentioned event. You may also find attached a memo concerning the final approval of the schedule […].

As stated in the attached memo, any modifications to this schedule must be submitted to the FEI for approval. […]

No modifications will be accepted less than 2 weeks prior to the event" [emphasis in the original].

18. The FFE, in turn, informed the Organizer of the approval of the Initial Schedules and also highlighted that modifications could not be accepted less than 2 weeks prior to the event.

19. After the approval of the Initial Schedules (without any Longines Ranking Competitions) by FEI, the Organizer changed the Initial Schedules by, *inter alia*, increasing the overall prize money for each of the December Villeneuve-Loubet Events to EUR 75,400, and for each of the January Villeneuve-Loubet Events to EUR 76,500. This change effectively transformed two competitions of each of the Villeneuve-Loubet Events into Longines Ranking Competitions (Group D). Whereas with the "old" amount of prize money provided for in the Initial Schedules, the winner of the competition would not have received any Longines (or Olympic) Ranking points, following the update of the Initial Schedules the winner stood to receive 50 ranking points.

20. The changes to the Initial Schedules were made by the Organizer after a telephone call with the FEI Jumping Department at the end of November 2019. In that call the Organizer inquired whether he could make the desired changes. The FEI has not disputed before or during these proceedings that its Jumping Department orally confirmed to the Organizer that the changes would be possible.

21. The relevant updates to the Initial Schedules (*i.e.* transformation of certain competitions into Longines competitions for which Longines/Olympic points became available, hereinafter referred to as the "Updated Schedules") occurred on the following dates:

Villeneuve-Loubet Event	**Addition of Longines Ranking Points**
13-15 December 2019	26 November 2019
20-22 December 2019	27 November 2019
27-29 December 2019	5 December 2019
3-5 January 2020	11 December 2019
10-12 January 2020	19 December 2019
23-26 January 2020	6 January 2020

22. The Updated Schedules indicated for each competition that was transformed into a Longines competition (*i.e.* for two competitions in each of the six Villeneuve-Loubet Events) that such competition *"[c]ounts for the Longines Rankings (Group D)"*. This information was highlighted in yellow to reflect the fact that the change was made after the approval of the Initial Schedules. It is undisputed that both the FFE and the FEI approved the Updated Schedules, and that the approval of the Updated Schedules was duly notified to the Organizer.

23. The Organizer of the Villeneuve-Loubet Events capped the number of invited athletes at 20,

with the top 16 athletes earning Longines Ranking points. The number of actual participants in the Longines Ranking Competitions at the Villeneuve-Loubet Events averaged out at 7 participants. It is undisputed that under the 2016 version of the FEI Invitation Rules, which applied to the Villeneuve-Loubet Events, an organizer of a CSI 2* event, such as the Organizer of the Villeneuve-Loubet Events, was free to invite whomsoever he wished to participate in his event. Such organizer was also free to limit which NFs could send athletes and which NFs were not invited. A new invitation system for FEI CSI 2* events limiting the discretion of the organizer, by implementing for the first time a quota system, became effective on 3 February 2020, *i.e.* shortly after the completion of the Villeneuve-Loubet Events.

24. The process and timelines for updating and changing schedules which have already been approved by the FEI are set forth in the FEI's rules and regulations.

25. Article 110.2 and 112.3 of the FEI General Regulations ("FEI GRs") provide for the following system with respect to the approval of schedules:

"Article 110 – Schedules for Events

2.2 CIMs: [Note: CIM stands for "Concours International Mineur". The Villeneuve-Loubet Events qualified as CIMs]

(i) Draft Schedules for CIMS which are approved by the FEI must reach the FEI four (4) weeks prior to the Event.
(ii) Definite Schedules must reach the FEI two (2) weeks prior to the Event.
(iii) If the Schedule is approved by the NF the Final approved Schedule must reach the FEI two (2) weeks prior to the Event.

2.3 The Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations. The FEI will not approve any Schedules when the closing dates for Entries have already passed.

Article 112 – Official Calendar

3 The Secretary General shall have the authority to remove any Competition and/or Event from the Calendar if justified circumstances relating to a Competition or the Event are established".

26. The Parties disagree as to which date is meant by the *"Closing Date for Entries"* within the meaning of Article 110.2.3 of the FEI GRs (hereinafter referred to as the "Closing Date for Entries"). The relevant positions of the Parties in this respect are set out below at Section IV.

27. Ms. Karlsson, who only participated in the December Villeneuve Loubet Events, registered for the competitions on 9 December 2019. Mr. Herck registered for the same competitions on 3 and 5 December 2020. The addition of Ms. Karlsson (through the addition of the NF-SRI) was the last change to the schedules approved by the FFE and by the FEI.

28. In January 2020, the FEI Legal Department instructed the Equestrian Community Integrity Unit ("ECIU") to investigate allegations of irregularities at the December Villeneuve-Loubet

Events. The ECIU issued a Report dated 13 February 2020 (the "ECIU Report"), which included the following conclusions with respect to the December Villeneuve-Loubet Events:

- The FEI's interpretation of Article 110.2.3 of the FEI GRs forbids any non-minor changes to a schedule after the definite entries deadline, including the addition of Longines Ranking classes. The Updated Schedules were set up too late and were, therefore, not in compliance with the FEI's rules.

- There are concerns with respect to the integrity surrounding the entry process as well as with respect to the payment, or lack thereof, of prize money to French riders. French riders initially stated they were paid into their respective FFE account, while ECIU later established that this was not the case and that prize money was paid into the Organizer's FFE account instead.

29. On 17 February 2020, the FEI Secretary General issued her decision (hereinafter the "FEI Decision") to remove several competitions (hereinafter the "Removed Competitions") of the Villeneuve-Loubet Events from the Longines/Olympic Ranking. Each of the SRI-NF, the Sri Lanka NOC, and the Romanian Equestrian Federation were notified of the FEI Decision, which included the following:

"Following questions and concerns raised by stakeholders regarding the FEI Events that took place in Villeneuve-Loubet (FRA) in December 2019, the FEI investigated the matter with the assistance of the Equestrian Community Integrity Unit.

Further to such investigations and the alleged irregularities, in accordance with art. 112.3 of the FEI General Regulations the FEI has decided to remove the competitions counting for Longines/Olympic Rankings points that, contrary to the FEI Rules (most notably Article 110.2.3 of the FEI General Regulations), had been added after the respective Definite Entries deadlines. (GRs art. 112.3 "The Secretary General shall have the authority to remove any Competition and/or Event from the Calendar if justified circumstances relating to a Competition or the Event are established" and art. 110.2.3 "The Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations. The FEI will not approve any Schedules when the closing dates for Entries have already passed")".

30. The SRI-NF and the Sri Lanka NOC were further informed that *"[a]s a consequence, Ms Mathilda Karlsson (SRI), dropped down on the Olympic Rankings within Group G from the 2nd place to the 7th place, and therefore Jasmine Shao-Man Chen (TPE) and Kenneth Cheng (HKG) earned the Olympic quota places for their respective NOCs".*

31. The Romanian Equestrian Federation was further informed that *"three of the six events at Villeneuve-Loubet in January 2020* […] *also had two classes counting for Longines Rankings points added after the Definite Entries deadline, again contrary to the FEI Rules"* and that *"[a]s a consequence, athletes who competed in those competitions added after the Definite Entries deadline at Villeneuve-Loubet will lose the ranking points earned in those specific competitions given the fact that the relevant competitions have been removed by the FEI".*

32. On the same day, the FEI issued the following press release:

"The investigation into the three events at Villeneuve-Loubet in December 2019 has established that, contrary to the FEI Rules (Article 110.2.3 of the FEI General Regulations), two competitions counting for the Olympic and Longines Rankings were added at each event after the respective Definite Entries deadlines. The updated Schedules for these three events were submitted to the FEI by the French National Federation and were mistakenly approved by the FEI.

As a result, and in accordance with Article 112.3 of the FEI General Regulations, the FEI has retrospectively removed these additional competitions, meaning that athletes who participated will lose their ranking points from these competitions. The Olympic and Longines Rankings have been updated accordingly".

33. On 4 and 6 March 2020, respectively, Mr. Herck, Ms. Karlsson and the SRI-NF submitted their appeals against the FEI Decision before the FEI Tribunal. On 20 March 2020, the FEI disclosed the ECIU Report; the redacted annexes thereof were provided on 23 March 2020. On 14 May 2020, after numerous submissions by the Parties, a hearing via videoconference was held.

34. On 16 June 2020, the FEI Tribunal issued its decision (the "Appealed Decision") finding as follows:

"1) The Appeals are admissible.

2) The Appeals are dismissed.

3) The FEI Decision stands.

4) All other requests are dismissed.

5) No deposits shall be returned to the Appellants. Each party shall pay their own costs in these proceedings".

35. In support of such conclusions, the FEI Tribunal, *inter alia*, stated the following:

"8.9 […] *[F]or the Tribunal it is clear that the Secretary General has pursuant to Article 28.2(vii) of the Statutes and Article 112.3 of the GRs the authority to (i) remove any Competition from the Calendar; and to (ii) annul ranking points for specific Competitions for "justified circumstances" or under "specific circumstances". The general authority of the Secretary General to decide as issued in the Decision has therefore been established. As the Decision itself outlines this power has been exercised pursuant to Article 112.3 of the GRs.* […]

8.11 Resulting from that, the Tribunal has to decide two points, first, have competitions counting for Longines and Olympic Ranking points contrary to FEI Rules been added after the respective Definite Entries deadlines, and second did "justified circumstances" exist for the Secretary General to exercise her authority to remove those competitions.

8.12 Pursuant to Article 110.2.3 of the GRs "The Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations. The FEI will not approve any Schedules when the closing dates for Entries have already passed". […] *It remains undisputed that that the FEI approved the Schedules which added additional Longines ranking competitions contrary to FEI Rules and Regulations, more specifically Article 110.2.3 of the GRs".*

8.13 The Tribunal wishes to emphasise once more that the FEI Rules and Regulations are also binding for the FEI itself. […] *Therefore and unless an overriding rule would allow for it, which is not the case at hand, the FEI should not have approved the Schedules which contained additional Longines ranking competitions. The FEI recognised and confirmed that this was their mistake.*

8.14 In this context, the Tribunal also wishes to clarify that Article 110.2.3 of the GRs does not distinguish between minor or other changes to the Schedules. In fact, the Tribunal finds that – unless force majeure or extraordinary circumstances exist – pursuant to this provision, the FEI is not to approve any changes to the Schedules after the Closing Date for Entries have already passed. While the Tribunal understands that there might be a need to change start times or names of Officials after the Closing Date for Entries, which have been defined by the FEI as minor changes, the rules currently do not reflect the possibility for the FEI to do so.

8.15 Finally, the Tribunal agrees with the FEI, that the late addition – contrary to the rules - of the Longines ranking competitions in question accepted by the FEI Jumping Department, completely transformed the nature of the Villeneuve-Loubet Events by instantly tripling the total number of Longines Ranking and Olympic Ranking points available there. This can certainly not be considered as a minor change, but a change that impacted the nature and the status of those respective events.

8.16 […] *The Tribunal takes note of two other competitions with Longines rankings being added after the Closing Date for Entries have been identified and the FEI explained that these were attributable to mistakes on the part of the respective NFs (France and Germany) and the FEI. The Tribunal finds it noteworthy that one of those competitions concerns an event at Villeneuve-Loubet in January 2019. Given these statistics, the Tribunal is satisfied that there were very few events where the FEI accepted Longines rankings competitions to be added after the Closing Date for Entries. As a result, the Tribunal is satisfied that this was not an FEI policy, or common practice, but rather rare incidents where the FEI made such mistakes.* […]

8.18 […] *[T]he Tribunal has in a next step to decide whether "justified circumstances" existed for the Secretary General to remove those competitions and thus cancel those ranking points.* […]

8.20 In the case at hand, the Tribunal finds that this was indeed the case. Article 1.3 of the Statutes and Article 100 of the GRs mandate the FEI to ensure that athletes and teams from different nations can compete in international events under "fair and even" or "fair and equal" conditions. While the conditions were the same for Mr. Herck and Ms. Karlsson, as well as for the other small number of athletes who competed at the Villeneuve-Loubet Events, this was not the case for those athletes who would have wished to participate in the respective events once the additional Longines rankings competitions had been added. In fact, they could no longer enter these events, unless they were accepted or invited by the Organiser. The Tribunal agrees with the FEI that, the "invisible athletes" to use the FEI's term, were disadvantaged by adding the Longines ranking competitions after the Closing Date for Entries, as they could no longer enter via their NFs or earn ranking points; at that point in time they were at the mercy of the Organiser's good will. In the case at hand the ranking points were earned at competitions were FEI Rules were not followed. […]*".*

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. By e-mail of 25 June 2020, and personally on 29 June 2020, the First Appellant filed his Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the Appealed

Decision, pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code") (the "Herck Appeal"). The First Appellant nominated Mr. Jacques Radoux, Legal Secretary at the European Court of Justice, Luxembourg, as arbitrator.

37. On 30 June 2020, pursuant to Article R47 of the Code, the Second Appellants filed their Statement of Appeal with the CAS against the same decision (the "Karlsson Appeal", and together with the Herck Appeal the "Appeals"). In her Statement of Appeal, the Second Appellants requested that the arbitration be referred to a sole arbitrator and proposed Mr. Jeffrey Benz to be appointed as sole arbitrator. Moreover, the Second Appellants requested an extension of twenty four (24) days to submit their Appeal Brief.

38. On 1 July 2020, the CAS Court Office requested the First Appellant to file his Appeal Brief in accordance with Article R51 of the Code and noted the First Appellant's choice to proceed with his appeal in the English language. Respondent did not object to the First Appellant's choice of language.

39. On the same date, the First Appellant informed the CAS Court Office that his Statement of Appeal should be considered as his Appeal Brief.

40. On 6 July 2020, in accordance with Article R32 of the Code and the CAS COVID-19 Emergency Guidelines, the CAS Court Office granted the Second Appellants an extension of fourteen (14) days to file their Appeal Brief. It further informed the Second Appellants that the First Appellant had also filed an appeal with the CAS challenging the Appealed Decision. The Second Appellants were invited to inform the CAS Court Office within three (3) days whether they agreed to the consolidation of the Appeals into one proceeding in accordance with Article R52 of the Code.

41. On 7 July 2020, the FEI informed the CAS Court Office that it did not agree with the appointment of a sole arbitrator and requested that the Appeals be decided by a three member panel. Furthermore, the FEI stated its agreement with the consolidation of the Appeals into one proceeding.

42. On 8 July 2020, the CAS Court Office granted the Second Appellants a further extension of ten (10) days for filing the Appeal Brief. It further confirmed the Parties' agreement to conduct the Karlsson Appeal in the English language.

43. On 8 July 2020, the First Appellant was invited to inform the CAS Court Office until 13 July 2020 whether he agreed to the consolidation of the Appeals into one proceeding in accordance with Article R52 of the Code. The First Appellant agreed to the consolidation on the same day.

44. On 9 July 2020, the Second Appellants agreed to the consolidation of the Appeals and, with Respondent's consent, requested a further extension of their time limit to file the Appeal Brief until no later than 15 August 2020. The CAS Court Office granted the request on the same day.

45. On 10 July 2020, both the First Appellant and the Second Appellants withdrew their respective consent to the consolidation of the Appeals and requested that the proceedings be continued separate from one another.

46. On 20 July 2020, the CAS Court Office informed the Parties that the President of the Appeals

Division had decided to consolidate the Appeals into one proceeding in accordance with Article R52 (5) of the Code.

47. On 30 July 2020, the CAS Court Office informed the Parties that the President of the Appeals Division had decided that the Respondent's time limit to submit its Answer to the Appeals shall start upon receipt of the Second Appellants' Appeal Brief. Furthermore, it invited the Appellants to jointly nominate an arbitrator.

48. On 31 July 2020, the FEI nominated Mr. Daniel Ratushny, Attorney-at-law, Toronto, Canada, as arbitrator.

49. On 3 August 2020, the CAS Court Office sent a reminder to the Appellants to jointly nominate an arbitrator. On 12 August 2020, the Second Appellants informed the CAS Court Office that they agreed to the appointment of Mr. Jacques Radoux as common arbitrator for the Appellants.

50. On 13 August 2020, CAS Court Office informed the Parties that Mr. Jacques Radoux would be considered as the common arbitrator of the Appellants unless heard otherwise from the First Appellant by no later than 17 August 2020.

51. On 18 August 2020, the CAS Court Office acknowledged receipt of the Second Appellants' Appeal Brief dated 14 August 2020 and confirmed the nomination of Mr. Jacques Radoux as the Appellants' common arbitrator. The Appeal Brief was received by the FEI on 26 August 2020 and a twenty (20) day time limit was set by the CAS Court Office for the FEI to submit its consolidated Answer to the Appeals.

52. On 7 September 2020, the CAS Court Office forwarded to the Parties the acceptance with disclosures of Mr. Jacques Radoux of his appointment as arbitrator.

53. On 16 September 2020, the CAS Court Office acknowledged receipt of the FEI's Answer filed on 14 September 2020 via e-filing. The Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter or for the Panel to issue an Award based solely on the Parties' written submissions.

54. On 16 and 18 September 2020, the Appellants' expressed their preference for the case to be decided with a hearing to be held in public.

55. On 17 September 2020, the FEI expressed its preference for the case to be decided without a hearing.

56. On 8 October 2020, pursuant to Article R54 of the Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President:	Ms. Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany.
Arbitrators:	Mr. Jacques Radoux, Legal Secretary to the European Court of Justice, Luxemburg, Luxemburg; Mr. Daniel Ratushny, Attorney-at-law, Toronto, Canada.

57. On 29 October 2020, the CAS Court Office, writing on behalf of the Panel, invited the Parties to provide the CAS Court Office with their respective positions in relation to certain questions raised by the Panel as to the substance of the Appeals, and also informed the Parties that the Panel had decided to hold a non-public hearing in this matter as follows:

"The Panel notes that the Appellants request the holding of a (public) hearing, while the Respondent does not consider a hearing necessary. The Panel is of the view that a hearing is beneficial for the purpose of reaching a decision on the respective appeals. However, because this case is not of a "disciplinary nature" (Article R57 (2) of the CAS Code), a hearing cannot be public, but must be held in camera (absent a consent by all Parties that the hearing shall be held in public). In light of the present restrictions evoked by the Corona pandemic, a physical hearing in Lausanne is not possible at the moment. Because it is not predictable when circumstances will allow for in-person hearings in Lausanne again, the Panel proposes to hold a hearing via videoconference […]*".*

58. On 5 November 2020, the CAS Court Office informed the Parties that the hearing would be held on 2 December 2020 via videoconference.

59. On 9 November 2020, the CAS Court Office, on behalf of the Panel, advised the Parties that the Panel did not consider it necessary to hear the witnesses that the Appellants intended to call at the hearing.

60. On the same day, the CAS Court Office, on behalf of the Panel, transmitted the Order of Procedure to the Parties which was duly signed and returned by the Parties within the prescribed time limit.

61. On 12 November 2020, the Parties filed additional submissions in reply to the substantive questions raised by the Panel on 29 October 2020.

62. On 2 December 2020, a hearing via video-conference was held. The Parties did not raise any objection as to the composition of the Panel.

63. In addition to the Panel and Ms. Andrea Sherpa-Zimmermann, Counsel at the CAS, the following persons attended the video hearing:

For the First Appellant:	Mr. André Herck, Counsel; Ms. Madalina Hentes, Assistant;
For the Second Appellants:	Ms. Mathilda Karlsson, Athlete; Mr. Luc Schelstraete, Counsel; Mr. Piotr Wawrzyniak, Counsel.
For the Respondent:	Ms. Áine Power, FEI Deputy Legal Director.

64. The hearing began at 9.30 am and ended at 1.50 pm without any technical interruption or difficulty. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. Ms. Karlsson was questioned by the Panel and the Respondent. After the Parties' final and closing submissions, the hearing was closed and the Panel reserved its detailed decision for this written Award.

65. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to

their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel had carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

66. On 3 December 2020, the Appellants jointly requested the Panel to re-open the hearing in order to react to the closing statement of the Respondent.

67. On 7 December 2020, the CAS Court Office informed the Parties, on behalf of the Panel, that the latter had decided not to re-open the hearing pursuant to Article R56 of the Code.

IV. THE POSITION OF THE PARTIES

68. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the First Appellant

69. The First Appellant submits the following in substance:

- The FEI Decision and the Appealed Decision violate his fundamental rights, including his right to be heard and his right to equal treatment. The First Appellant took part in the Villeneuve-Loubet Events in good faith and trusted in the approval of the Initial and Updated Schedules by the FEI. 90% of the FEI competitions (between 1 January 2020 and 15 March 2020) faced important modifications of the draft schedules after the definite entries date, but riders were never penalized through the annulment of their results. This is a violation of the principle of non-discrimination.

- The Organizer as well as the riders (including the First Appellant) were entitled to put legitimate faith in the FEI's approval of the schedules. In late November / early December 2019, a FEI jumping manager confirmed in a phone call with the Organizer and four other witnesses, *inter alia*, the following:

  - that the addition of ranking competitions would always be possible, because it is to the advantage of the riders;

  - that the Organizer is perfectly free to invite the countries of its choice without any restrictions (except the host nation);

  - that the Organizer is perfectly free to invite the number of athletes as he deems fit;

  - that any update or modification of the schedules must be sent to the FEI for approval two weeks before the start of the competition;

  - that the modifications approved by the FEI are definitively applicable.

- The Organizer took reasonable precautions to make sure that the changes to the initial schedules would be legal under the FEI's rules and regulations. Under the FEI regulations, for minor events such as the Villeneuve-Loubet Events, it was essentially within the Organizers free discretion who he would invite and how many riders he would admit for each competition. There are other events comparable to the Villeneuve-Loubet Events with a comparably small number of participating riders.

- The increase of prize many occurred more than two weeks before the beginning of the Villeneuve-Loubet Events and was, therefore, in full compliance with the FEI's rules and regulations. The *"Closing Date for Entries"* mentioned in Article 110.2.3 of the FEI GRs, which is the relevant time limit until when the FEI accepts modifications to schedules, is the veterinary inspection. The veterinary inspection takes place either on the same day as the first competition or on the day before. The FEI's position that the *"Closing Date for Entries"* means the same thing as the *"Definite Entries Date"* mentioned in Article 251.9 of the FEI JRs, which passed much earlier, is wrong. Both dates mean completely different things, as evidenced by the definition of the *"Closing Date for Entries"* in the 2019 FEI JRs.

- The First Appellant did nothing wrong. The FEI cannot punish the First Appellant without any proof of a wrongdoing committed by him. The FEI expressly admits that it made a mistake. Accordingly, the principle of legitimate belief must prevail on behalf of the First Appellant.

- The ECIU Report, which – in the FEI's view – proves various irregularities of the Villeneuve-Loubet Events, is partial, incomplete and not final. The report was not filed in February 2020 but in March 2020. The FEI ignored the 28 reports of its own officials who all confirmed that all rules and regulations of the FEI had been perfectly respected during the Villeneuve-Loubet Events. The ECIU never interviewed the First Appellant for the report. The ECIU Report shows a total lack of impartiality.

- There were no irregularities at the Villeneuve-Loubet Events. Neither the First Appellant nor his father – the Organizer – ever saw Ms. Mathilda Karlsson before December 2019. The Organizer admitted Ms. Mathilda Karlsson to the Villeneuve-Loubet Events because she was better educated and more polite than most of the other riders.

70. The First Appellant requests the following relief:

"First of all I ask the Court to have an [sic] *hearing and to hear my witnesses*

1 Miss Christelle, Angela, Maria Caiulo

2 Mademoiselle Tiphaine, Micheline, Monique Testa

3 Mr. Nicolas, Roger, Raymond Laugier

4 Mr. Florient Sintes

Second,

Taking in consideration all the above, I kindly ask the Court to revoke the decision of the FEI Tribunal of 16th of June 2020 and to hand over my Ranking points obtained regularly in the 12 competitions canceled [sic!] *by the decision of the Secretary General of the FEI of 17/02/2020*

Third,

Or, in very subsidiary to note that the sentence prohibiting the modification of a Ranking classes appeared only on the programs for the year 2020; and hand over at minimum my Ranking points for all competitions in 2019.

Similarly, the FEI has not reimbursed the overpayment of FEI fees for the 6 competitions canceled [sic!] *for the year 2019.*

Therefore, the cancellation of the 6 Ranking classes during 2019 must be submitted and the related Rankings points re-allocated".

B. The Position of the Second Appellants

71. The Second Appellants submit the following in substance:

- Ms. Karlsson held the second position in the Olympic Ranking (Group G) until the last quarter of the year 2019, when her horse *Chopin* developed a disease which prevented her from participating in competitions between mid-September and mid-October and in November. As a result, she dropped down to the 7th place of the Olympic Rankings (Group G).

- After her horse's recovery, Ms. Karlsson registered for several CSI 4* and CSI 3* shows (in Frankfurt, Liverpool and Riyadh) with the aim to win as many ranking points as possible for the Olympic Ranking by 31 December 2019, the deadline by which points for the Olympic qualification could be earned. In early December 2019, Ms. Karlsson was informed by another rider of the Villeneuve-Loubet Events, and because these events where held in France (where she had just participated in another show), she decided to contact the Organizer to find out whether she could still participate, *inter alia,* with a view to spare her horse the long travel to Saudi Arabia or other countries.

- There was nothing suspicious about Ms. Karlsson's registration at the Villeneuve-Loubet Events. It is entirely normal that she checked the schedules and the availability of Longines Ranking points, because it was her very goal to win as many ranking points as possible in order to earn a quota place for the Olympic Games for her country, Sri Lanka. Ms. Karlsson had no reason to suspect any irregularity of the schedules.

- The FEI Decision and the Appealed Decision are erroneous and arbitrary and discriminatory against Ms. Karlsson. The FEI was allowed to add the Longines rankings to the schedules after the definite entries date, and it was common practice by FEI to update schedules within its sole discretion shortly before or even during an event. In

2018 and 2019, at least 30 FEI events carried out modifications to the schedules approved by the FEI after the definite entries deadlines. Accordingly, there was not a mistake or an error, but a structural policy of the FEI to approve changes to schedules after the definite entries deadline.

- Ms. Karlsson, as an athlete participating in competitions organized by the FFE and by the FEI, cannot be held responsible for any alleged mistakes in the approval of schedules, but must be able to rely in the schedules approved by the FEI. Ms. Karlsson had the legitimate expectation that the schedules approved by the FFE and by the FEI were valid, and that the relevant competitions counted for the Olympic Ranking. The FEI Secretary General did not take her legitimate expectations into account. The concept of legitimate expectation has been repeatedly recognized by CAS.

- The increase of the price money, which converted two competitions of each of the Villeneuve-Loubet Events into competitions counting for Longines points, happened within the relevant deadlines and was, therefore, in compliance with the FEI's rules and regulations. According to Article 110.2.2 of the FEI GRs, definite schedules must reach the FEI two weeks prior to the event. The Updated Schedules reached the FEI more than two weeks before the beginning of each of the Events.

- The schedules of the Villeneuve- Loubet Events were approved by the FFE and by the FEI prior to the *"Closing Date for Entries"*, which is the date of the veterinary inspection happening shortly before the event. The *"Closing Date for Entries"* does not equal the *"Definite Entries Date"*. Any ambiguity in this respect must be interpreted *in dubio contra stipulatorem* and for the benefit of the weaker party. Under CAS's case law the rules of sports federations must be accessible, predictable and clear.

- No *"justified circumstances"* have been *"established"* by the FEI in the sense of Article 112.3 of the FEI GRs. Investigations by ECIU and allegations of irregularities are not sufficient to establish *"justified circumstances"* for the removal from the calendar of the Villeneuve-Loubet Events. The draft ECIU Report has not been finalized and there are serious concerns about the authenticity of the ECIU Report. The conclusions of the ECIU Report are rather vague and cannot be qualified as any evidence of any alleged irregularity. The ECIU Report only contains insinuations but no evidence.

- The FEI Tribunal which issued the Appealed Decision is not an independent court in the meaning of Article 75 of the SCC. The proceedings before the FEI violated the fundamental rights of Ms. Karlsson, including her right to procedural fairness and the right to a fair hearing. The Second Appellants invoke a variety of different assertions as to why the proceedings before the FEI Tribunal violated their procedural rights.

72. In their Statement of Appeal and in the Appeal Brief, the Second Appellants request the following relief:

"a) consider this matter as a hearing de novo and upon hearing the evidence, decide that the FEI Tribunal Decision and the FEI Secretary General Decision shall be annulled.

b) set aside the FEI Tribunal Decision;

c) reinstate the Olympic Rankings of Ms Karlsson as they were prior to the FEI Secretary General Decision; and

d) if the FEI agrees to decide this matter et eqexo et bono following Article 187(2) PILA and R45 of the CAS Code Procedural Rules

e) alternatively to grant an Olympic qualification to Ms Karlsson and Mr Cheng.

f) alternatively to cancel the FEI Secretary General Decision in part with regards to the cancellation of the Longines rankings obtained during the Villeneuve-Loubet Events in December 2019 and to reinstate these rankings

g) order the Respondent to:

(i) reimburse the Appellants their legal costs and other expenses pertaining to this appeal; and

(ii) bear the costs of the arbitration (if any)".

C. The Position of the Respondent

73. Respondent submits the following in substance:

- The addition of Longines Ranking Competitions to the Initial Schedules of the Villeneuve-Loubet Events after the definite entries deadline was an attempt to ensure that only those NFs/Athletes "handpicked" by the Organizer (the father of the First Appellant) would have the opportunity to earn valuable Longines Ranking and Olympic Ranking points. With the Organizer's established pattern of only adding the additional lucrative Longines Rankings competitions after the definite entries deadline, by which point he had almost total discretion over which entries he could accept/reject, the Organizer ensured that he could effectively "cherry pick" some participants to the exclusion of others.

- Those athletes who would have been motivated to accept an invitation and enter the Villeneuve-Loubet Events prior to the definite entries deadline if the Longines Ranking Competitions had been included in the Initial Schedules by that time were significantly disadvantaged. By the time the additional Longines Ranking Competitions were added, their ability to participate depended entirely on the Organizer accepting them or not. The ECIU Report confirms that the Organizer even attached certain pre-conditions to accepting late entries, such as, in some cases requiring Athletes to forego their prize money.

- The highly unusual and huge opportunity to earn a lot of a ranking points must have been clear to both Appellants just from reviewing the schedules. Any objective analysis must lead one to the conclusion that the Appellants were aware of the scheme that had been put in place by the Organizer to give maximum opportunities to a group of hand-picked athletes to earn ranking points to the exclusion of the vast majority of their competitors/rivals and that, given the very low numbers of participants, they stood to

personally benefit from this by earning an above average amount of Longines Ranking/Olympic Ranking points just by participating in the competitions in question.

- Given the significantly unequal conditions created by the addition of the Longines Ranking competitions after the definite entries deadline, the decision of the FEI Secretary General to remove the Longines Competitions at the Villeneuve-Loubet Events that were added after the deadline was entirely justified and necessary to ensure the principles of fairness, a level playing field and the integrity of the Longines Rankings and the Olympic Rankings for all FEI Jumping athletes.

- The FEI Secretary General enjoys broad discretion under Article 112.3 FEI GRs. Given the wording of Article 112.3, there is a strong case to be made that the FEI Secretary General does not even need to be satisfied that there has been a breach of the rules in order to rely on Article 112.3. When events are not held in accordance with the FEI Rules (as in this case), that must always be a justified circumstance. What does and does not constitute "justified circumstances" in the sense of this Article 112.3 is left to the FEI Secretary General to determine following a review of the circumstances of the particular case.

- There was no practice within the FEI of approving the addition of Longines Ranking classes after the definite entries deadline had passed; the approval of the Updated Schedules was an anomaly, a mistake and the FEI had a duty to rectify it. The FEI even publicly stated that the approval of the Updated Schedules was a mistake, a human error, on the part of the FEI. Of the 29 Events put forward by the Appellants as having "similar modifications" as the Updated Schedules, there are only 2 other examples of a competition being added after the definite entries deadline (another one of the Organizers events at Villeneuve-Loubet in January 2019 and Riesenbeck, GER) and these are attributable to mistakes on the part of the respective NFs (France and Germany) and the FEI. This is not evidence of a common conduct.

- The FEI has the overall control of the schedules for all FEI events (see Article 259.2 of the FEI JRs). Regardless of what a National Federation approves for a CIM, the final approval rests with the FEI. Having said that, for CIMs, such as the Villeneuve-Loubet Events, the role of the National Federation, in this case the FFE, is greater and the National Federation "takes the lead" in reviewing the Schedules of CIMs, albeit that final approval rests with the FEI. In the case of the Villeneuve-Loubet Events, the French National Federation failed to notice that the addition of the Longines Ranking Competitions did not comply with the FEI Rules and forwarded the Updated Schedules to the FEI Jumping Department with the additional Longines Ranking Competitions already included.

- The terms *"definite entries deadline"* mentioned in Article 251.9 FEI JRs and *"Closing Date for Entries"* are interchangeable - they mean the same thing. Once that date has passed, competitions cannot be added to the schedules. It is a matter of fact that the competitions in question were added to the Initial Schedules after the definite entries date. The Appellants rely on semantics in an attempt to distinguish the term *"definite*

entries deadline" from *"Closing Date for Entries"* in order to support their argument that schedule changes are permitted after the definite entries deadline.

- The reason that the Removed Competitions were taken out of the FEI Calendar and, consequently, do not count for the Olympic or Longines Rankings is that it is not permitted under the FEI Rules to add competitions to a schedule after the definite entries date has passed.

- The Appellants were not discriminated against and should not benefit, to the detriment of their rivals, from a rule violation and cannot derive legitimate interests from a rule violation; their interests do not outweigh the legitimate expectations of the general body of jumping athletes that the Longines/Olympic Rankings operate fairly.

- The Appellants' reliance on the legitimate expectation argument is not well founded; the violation of a rule cannot by its nature give rise to legitimate interests.

- The Longines Ranking Competitions that were added after the definite entries deadline must be regarded as new competitions given the entirely different nature and significance of the competitions.

- There was no violation of the Appellants' human rights in the FEI Tribunal proceedings and, even if there was, such violation would be cured by the *de novo* nature of the CAS proceedings.

74. In its Answer, the Respondent requests the following relief:

"Based on the above the Fédération Equestre Internationale respectfully asks the CAS Panel to:

(a) Dismiss the Appeals in their entirety;

(b) Confirm the FEI Secretary General's Decision;

(c) Order the Appellants to pay the arbitration costs, as well as a contribution towards the FEI's legal fees and other expenses incurred in connection with these proceedings, in accordance with CAS Code Article R64.5".

V. JURISDICTION

75. The jurisdiction of the CAS is not disputed by the Parties.

76. According to Article R47 of the Code:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

77. The jurisdiction of CAS is contemplated by Article 162.1 of the FEI GRs (2020) as follows:

"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 Article 162.2 below):

(a) […]

(b) With the CAS against Decisions by the FEI Tribunal. […]*".*

78. The Panel, consequently, has jurisdiction to decide on the Appeals filed against the Appealed Decision.

79. The Parties further confirmed that CAS has jurisdiction by execution of the Order of Procedure.

VI. ADMISSIBILITY

80. The Appealed Decision was notified to the relevant NFs on 16 June 2020. The respective Statements of Appeal were filed by the First Appellant on 25/29 June 2020 and by the Second Appellants on 30 June 2020, *i.e.* within the deadline set in Article 162.7 of the FEI GRs (2020), which provides that *"[a]ppeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant to the Procedural Rules of the CAS Code of Sports-related Arbitration so as to reach the CAS within twenty-one (21) days of the date on which the notification of the FEI Tribunal Decision was sent to the National Federation of the Person Responsible"*. The Statements of Appeal also complied with the requirements of Article R48 of the Code. The admissibility of the Appeals is not challenged by any Party.

81. The Appeals are therefore admissible.

VII. APPLICABLE LAW

82. The Second Appellants propose that the Appeals be decided *ex aequo et bono*. A CAS panel may be authorized by the parties to decide a dispute *ex aequo et bono* under CAS's Ordinary Arbitration Procedure (Article R45 of the Code). This option does, however, not exist for appeal proceedings before the CAS. For appeal proceedings, Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

83. Considering that the FEI stated that it would not agree to the Second Appellants' proposal even if such option were permissible in appeal proceedings, the question of whether the Parties may replace Article R58 of the Code by their own choice of law is moot. Instead, the Panel has to identify the *"applicable regulations"* for the purposes of Article R58 of the Code. The *"applicable regulations"* are those contained in the rules and regulations of the FEI because the appeal is

directed against a decision issued by the FEI Tribunal, which was passed applying the FEI's rules and regulations.

84. The rules and regulations of FEI which are most relevant in this case are the following:

FEI Statutes, Article 28 – Secretary General:

"28.2. The Secretary General is responsible for the following: […]

vi. The approval of the Calendar of Events and if appropriate the removal of Competition(s) and/or Event(s) from the Calendar;

vii. The annulment of ranking points for specific Competitions and/or Events and under specific circumstances; […]*".*

FEI GRs Article 100 – General Regulations and Sports Rules:

"The General Regulations (GRs) are established so that individual Athletes and teams of Athletes from different National Federations (NFs) may compete against each other under fair and equal conditions with the welfare of Horse as paramount".

FEI GRs Article 110 – Schedules for Events:

"2.3 The Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations. The FEI will not approve any Schedules when the closing dates for Entries have already passed".

FEI GRs Article 112 – Official Calendar:

"3. The Secretary General shall have the authority to remove any Competition and/or Event from the Calendar if justified circumstances relating to a Competition or the Event are established".

FEI GRs Article 115 – Invitations:

"The FEI may impose a specific online system to manage invitations, provided the Secretary General has duly informed the OCs and NFs of such requirement with sufficient prior written notice. Invitations for individual Athletes to take part in CIs must be sent to the NFs of the Athletes concerned. Invitations from OCs must be sent to the NFs of the Athletes concerned. General Regulations, 24th edition, 1 January 2020 13 Invitations must include copies of the schedule. The percentage of Athletes personally invited by OCs shall be specified in the Sport Rules for the specific Disciplines. However, these invitations from OCs (foreign and/or home Athletes) must be under the same conditions as for other Athletes and must in no way be directly or indirectly in connection with a financial contribution. Pay Cards and appearance fees, even in the form of VIP tables and Event privileges, are strictly prohibited and will be sanctioned".

FEI GRs Article 128 – Distribution of Prizes:

"1. The total amount of prize money shown for each Competition in the schedule must be distributed.

2. Prize money must be distributed to the Chefs d'Equipe or to the winning Owners, lessees or Athletes within

ten (10) days after the last Competition of the Event provided they have met all their financial and other obligations to the OC".

FEI JRs Article 251 – Entry Deadlines:

"9.1. Entries for FEI Championships and Games must be made following the compulsory two phases outlined under GRs Arts. 116.2.2(i) and 116.2.2(ii):

- Nominated entries must be made at least four weeks before the Event. […]

- Definite entries must be made at the latest four days preceding the beginning of the Event. […]

9.2. For all other Events including CSIOs definite entries must be made within the deadlines indicated below; other deadlines for NFs to indicate their intent to participate may be requested by the NF/OC in the Schedule. Definite entries must be made by the date mentioned in the Schedule. This date may not be earlier than four weeks prior to the beginning of the Event and later than four 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 represent the final selection of Athletes and Horses that may participate in the Event. Following receipt of the definite entries, substitutions of Horses and/or Athletes may only be made with the express permission of the OC. The OC must print in the Schedule the latest date for substitution of Horse (s) and Athlete(s), which may not be later than the day of the Horse inspection".

85. As correctly pointed out by the FEI Tribunal in the Appealed Decision, NFs, such as the SRI-NF, when becoming members of the FEI, are accepting to be bound by the FEI rules and regulations. Similarly, athletes like Mr. Herck and Ms. Karlsson are considered as members of FEI members as well as FEI registered athletes. By virtue of accreditation at the Villeneuve-Loubet Events they agreed to be bound by FEI rules and regulations. The Villeneuve-Loubet Events concerned FEI sanctioned events, held in accordance with FEI rules and regulations. Furthermore, the Initial and the Updated Schedules contained the applicable FEI rules and regulations in the *"II. General Conditions"* sections, including the Statutes, GRs and JRs. Being compliant with these regulations is not optional but mandatory for the Appellants, who cannot take refuge in national laws for the purpose of escaping the obligations they have accepted to be bound to under the FEI rules and regulations.

86. As a result, FEI's rules and regulations shall apply primarily. Swiss law, being the law of the country in which the FEI is domiciled, applies subsidiarily.

VIII. THE APPELLANTS' REQUEST FOR A PUBLIC HEARING

87. The Appellants requested that the Panel order the hearing to be held in public. They rely on Article 6 (1) of the European Convention on Human Rights ("ECHR") and argue that according to the established case law of the European Court of Human Rights ("ECtHR") set forth in *Mutu, Pechstein vs. Switzerland* (Judgement of the ECtHR dated 2 October 2018, applications no. 40575/10 and no. 67474/10), the public character of the proceedings (including before CAS) is fundamental when arbitration is "forced".

88. The Panel declined the Appellants' request and conducted the oral hearing in private. Neither

the Code nor Article 6 (1) ECHR provide a basis for the Appellants' request for a public hearing. Article R57 of the Code, which is narrow in scope (KOZLOWSKA-RAUTIAINEN D., Chapter 9: The Right to a Public Hearing in Arbitration in Light of ECtHR Judgments, in CALISSENDORFF/SCHÖLDSTRÖM (eds), Stockholm Arbitration Yearbook 2020, Stockholm Arbitration Yearbook Series, Volume 2, pp. 137, 152), provides that a public hearing may be requested in appeal proceedings by a physical person only when the dispute is of a *"disciplinary nature"*. A dispute is of a *"disciplinary nature"* if it sanctions a behaviour in violation of statutes or rules of a federation (see, *e.g.*, CAS 2002/A/409, Award of 28 March 2003, para. 15). The object of disciplinary proceedings is an individual (mis)behaviour by an athlete or other person. The FEI Decision is the response to alleged irregularities in the approval of schedules by the FFE and the FEI, *i.e.* the rectification of an administrative mistake made by the competent sports bodies. It is entirely disconnected from the behaviour or individual actions of the athletes, who – as the FEI expressly admits – complied with the rules and are not accused of any wrongdoing. While it is true that the FEI Decision necessarily affects any athlete who loses points earned during the Removed Competitions, the Panel considers such effect to be a mere reflex (or side effect) of the FEI Decision. The athletes have neither been sanctioned nor have they been the subject of disciplinary investigations addressing their individual behaviour. As a result, the present dispute cannot be characterized as a disciplinary matter.

89. Contrary to what the Appellants argue, the judgement of the ECtHR in *Mutu & Pechstein vs. Switzerland* does not warrant a public hearing in any case perceived as "forced" arbitration. The ECtHR clearly restricts the right to request a hearing to disciplinary or ethical matters:

"179. The Court would further observe that the principles concerning public hearings in civil cases, as described above, are valid not only for the ordinary courts but also for ***professional bodies ruling on disciplinary or ethical matters*** *(see Gautrin and Others v. France, 20 May 1998, § 43, Reports 1998-III)".*

90. It follows that Article R57 (2) of the Code is fully compliant with the principles set up by the ECtHR in *Mutu & Pechstein vs. Switzerland*. The Panel considers that the Appellants did not have a right for a public hearing.

IX. OTHER PROCEDURAL ISSUES

91. On the day after the hearing, the Appellants requested the re-opening of the oral hearing, arguing that the FEI introduced new arguments in its closing statement to which the Appellants had to be heard. The Panel did not consider it necessary to re-open the hearing. The Parties had ample opportunity to present their cases both in writing and orally, and the Panel did not discover anything relevant and new in the FEI's closing statements which required a re-opening of the hearing.

X. SCOPE OF THE PANEL'S REVIEW

92. According to Article R57, first paragraph of the Code,

"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision

challenged or annul the decision and refer the case back to the previous instance. …".

93. Both the First Appellant and the Second Appellants have alleged numerous violations of due process during the proceedings before the FEI Tribunal which relate, *inter alia*, to the independence and impartiality of the FEI Tribunal, the right to procedural fairness and the right to a fair hearing.

94. As a consequence of its full power to examine all facts and legal issues of this dispute *de novo* under Article R57 (1) of the Code, the Panel does not need to address any of these procedural challenges raised by the Appellants. Indeed, pursuant to established CAS jurisprudence, a *de novo* hearing is *"a completely fresh hearing of the dispute between the parties, any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance, whether within the sporting body or by the Ordinary Division CAS panel, will be cured by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations"* (CAS 2008/A/1574, Award of 7 July 2008, para. 42; *see also* CAS 2012/A/2702, Award of 8 May 2012, para. 122; CAS 2007/A/1286/1288/1289, Award of 4 January 2008, para. 11).

95. Accordingly, even if there had been a lack of due process in the proceedings before the FEI Tribunal, any such deficiencies are cured by the CAS in its hearing of this full appeal.

XI. MERITS

96. The Appellants appealed the FEI Decision to the FEI Tribunal. The FEI Tribunal upheld the FEI Decision, which caused the lodging of the present Appeals.

A. The Legal Framework

97. Pursuant to Article 28.2 (vi) and (vii) of the FEI Statues, the FEI Secretary General is responsible for *"the approval of the Calendar of Events and if appropriate the removal of Competition(s) and/or Event(s) from the Calendar"* and for the *"annulment of ranking points for specific Competitions and/or Events and under specific circumstances"*. Pursuant to Article 112.3 of the FEI GRs, the FEI Secretary General is given the *"authority to remove any Competition and/or Event from the Calendar if justified circumstances relating to a Competition or the Event are established"*.

B. The Issues

98. The Parties have filed detailed submissions and a large volume of evidence. The key issues which, in the Panel's view, must be addressed for the decision on the Appeals are the following:

    1. Does the FEI Secretary General's authority to remove competitions or events from the calendar include the power to remove such competitions or events from the calendar after the relevant competition or event has taken place (*i.e.* retroactively)?

    2. Did the FEI establish *"justified circumstances"* relating to the Removed Competitions?

a. Can *"justified circumstances"* be derived from the allegedly late addition of Longines/Olympic Ranking points to certain competitions?

b. Can *"justified circumstances"* be derived from any other circumstances surrounding the Villeneuve-Loubet Events?

1. Does the FEI Secretary General have authority to remove events/competitions with retroactive effect?

99. According to the Respondent, the FEI Decision is based on the FEI Secretary General's competence *"to remove any Competition and/or Event from the Calendar if justified circumstances relating to a Competition or the Event are established"*, Article 112.3 of the FEI GRs.

100. Article 112.3 was inserted into the FEI GRs effective 1 January 2013, primarily as a measure to safeguard FEI's events and competitions against rule violations going to the integrity of the event or competition, e.g. bribery or betting. It is clear to the Panel that the FEI Secretary General's authority encompasses the removal of events or competitions *before* such event or competition has taken place.

101. Article 112.3 of the FEI GRs does not, however, address whether the FEI Secretary General can still exercise her authority *after* the event or competition has been held. It does neither expressly allow, nor expressly prohibit the retrospective removal of an event or competition. It is, therefore, a question of interpretation whether or not the FEI Secretary General's power to remove an event or competition can be exercised retroactively.

102. The wording of Article 112.3 of the FEI GRs, in particular the words "to remove", does not speak against the retrospective removal of an event or competition. However, the Panel notes that Article 112.3 of the FEI GR's does not explain what the consequences are of a removal *after* the event or competition with respect to the ranking, points earned by the competitors, prize money, etc. A clarification of such consequences in conjunction with Article 112.3 of the FEI GRs would have certainly been helpful, particularly in light of the fact that the annulment of ranking points as one important potential consequence of the removal of an event or competition is addressed at a different place, namely in Article 28.2 (vii) of the FEI Statutes, where it is separated from the FEI Secretary General's competence to remove events or competitions (see Article 28.2 (vi) of the FEI Statutes).

103. Although the structural system of the FEI's rules on the FEI Secretary General's authority to remove events/competitions and to annul ranking points is not entirely clear, the Panel is satisfied that Article 112.3 of the FEI GRs equips the FEI Secretary General with the authority to remove events or competitions even with retroactive effect, and that FEI's intent to include the retroactive removal was sufficiently transparent for all stakeholders. In a memorandum prepared by FEI for distribution to the National Federations in advance of the ratification of the amendments to Article 112.3 of the FEI GRs (the "FEI Memo"), the rationale and scope of application of the amendment is explained to the NFs as follows:

"Given the IOC's recent focus on integrity, the FEI Bureau suggests expanding the Secretary General's authority

to approve the Calendar ***to include removing Events from the Calendar, even after they are held, if rule violations going to the integrity of the Event are established****. In addition under specific circumstances, the Bureau proposes giving the Secretary General directly the authority to annul the ranking points from a particular Event for integrity violations. Along the same lines, the rules should be clarified to make clear that that evidence adduced by the ECIU relating to the integrity of FEI Events is considered admissible and compelling evidence in any Tribunal proceeding. Further, ASOIF recently provided all of the International Federations with "Model Rules on Betting and Anti-Corruption" which we recommend integrating into the FEI regulatory system in relevant part as proposed in the attached draft"* [emphasis added].

104. According to the FEI Memo, the FEI Secretary General's authority was to include the removal of events *"even after they are held"*. In this context, the Panel notes that the protection of the integrity of FEI's events and competitions will be much more effective if they may also be cancelled retroactively, because – in many cases – the circumstances giving rise to integrity or ethical issues (such as betting, bribery or match fixing) will only become known through information that transpires as late as during or after the event. This assumption is corroborated by the examples provided by FEI in which the FEI Secretary General removed events from the calendar after investigations revealed that manipulations had occurred during the events (in one case, because a foreign judge, who had not actually attended the event, had submitted a false report about the compliance of the course with FEI's requirements, in the other case because of nationalistic judging by two judges; see FEI Tribunal Decision 2018-04, FEI v Ilvira Jogina, 26 April 2018, and FEI Press Release: https://inside.fei.org/news/fei-removes-lier-grand-prix-special-results-olympic-rankings). A broad interpretation of Article 112.3 of the FEI GRs serves the principal goal of the FEI to have athletes and team *"compete against each other under fair and equal conditions"* (Article 110 of the FEI GRs). Hence, the integrity-driven rationale of Article 112.3 of the FEI GRs supports the Panel's understanding that a retroactive removal of irregular events and competitions by the FEI Secretary General shall, in principle, be possible.

2. Has the FEI established "justified circumstances" relating to the Removed Competitions?

105. The next question is whether the FEI Secretary General established *"justified circumstances"* for the removal of those Villeneuve-Loubet competitions which include Longines/Olympic Ranking classes. For the purpose of answering this question, the Panel needs to look at the reasons upon which the FEI Secretary General relied when she issued the FEI Decision. According to the FEI Decision, the Removed Competitions were taken off the calendar because they included *"Longines/Olympic Rankings points that, contrary to the FEI Rules (most notably Article 110.2.3 of the FEI General Regulations), had been added after the respective Definite Entries deadlines"*. This reasoning (late addition of ranking points) is the reference point for the Panel's analysis of the existence of *"justified circumstances"*.

a. "Justified circumstances" due to the allegedly late addition of Longines/Olympic Ranking competitions?

106. As a preliminary remark, the Panel notes that in its view, only an irregularity, *i.e.* a rule violation, may justify a retroactive removal of a competition under Article 112.3 of the FEI GRs. In other words, an event that has been held in full compliance with the law and with the FEI's rules and

regulations may *per se* not become the subject of a subsequent removal for *"justified circumstances"*. This follows from the integrity-driven rationale of Article 112.3 of the FEI GRs, the inception of which intended to expand the FEI Secretary General's authority to remove events from the Calendar *"if rule violations going to the integrity of the Event are established"*. The issue of a rule violation will be addressed immediately below at subsection (i).

107. When a rule violation is established, the next question is whether that rule violation alone establishes *"justified circumstances"*, or whether the Panel has to take into account other facts and circumstances for its respective assessment. This issue will be addressed below at (ii).

108. The next question, if question (ii) is answered affirmatively, is whether the circumstances of the present case justified the FEI Secretary General's removal of the competitions. This issue will be addressed below at (iii).

(i) Late addition of Longines/Olympic Ranking points?

109. It is at the core of this dispute whether the "upgrade" of the Removed Competitions into Longines/Olympic Ranking Competitions occurred in accordance with the applicable rules and regulations of the FEI, or whether such "upgrade" was irregular, because it happened too late.

110. Pursuant to Article 110.2.3 of the FEI GRs, *"[t]he Schedules approved and published by the FEI shall be binding as if they were incorporated within the relevant Rules and/or Regulations. The FEI will not approve any Schedules when the closing dates for Entries have already passed"*. Accordingly, schedules cannot be changed after the Closing Date for Entries.

111. The Appellants purport that the Closing Date for Entries is the last moment when a rider can be entered to an event, which is one hour prior to the horse inspection, whereas the definite entries deadline (on which FEI relies) is a certain date outlined in the schedules, and has nothing to do with the Closing Date for Entries.

112. The Panel is not convinced of the Appellants' argument. The Appellants are not permitted to rely on the CSI invitation rules contained in Annex V of the 2020 FEI JRs or Annex V of the 2019 FEI JRs. The 2019 version provides that *"[t]he following CSI Invitation Rules will apply as of a date to be determined by the FEI Secretary General and duly notified to NFs with sufficient prior written notice. Until such date the 2016 CSI Invitation Rules, published at 2016 CSI Invitation Rules, will apply"*. The 2020 version provides that these new CSI Invitation Rules are applicable to *"Events taking place as of week six in 2020* (the week beginning on 3 February 2020). ***For Events taking place before this date the 2016 CSI Invitation Rules, published at 2016 CSI Invitation Rules, will apply****"* [emphasis added]. Hence, the content of Annex V of the 2019 and 2019 FEI JRs did undisputedly not apply to the Villeneuve-Loubet Events. Neither the term *"definite entries deadline"* nor the term *"Closing Date for Entries"* is used in the 2016 Invitation Rules applicable to the Villeneuve-Loubet Events, so any reliance by the Appellants on the wording of the Invitation System to support their argument on the interpretation of these phrases is without merit.

113. The relevant rule for entries for the type of event at issue here is set forth in Article 251.9.2 of

the 2019 FEI JRs:

"For all other Events including CSIOs definite entries must be made within the deadlines indicated below; other deadlines for NFs to indicate their intent to participate may be requested by the NF/OC in the Schedule. ***Definite entries must be made by the date mentioned in the Schedule. This date may not be earlier than four weeks prior to the beginning of the Event and later than four 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 represent the final selection of Athletes and Horses that may participate in the Event. Following receipt of the definite entries, substitutions of Horses and/or Athletes may only be made with the express permission of the OC. The OC must print in the Schedule the latest date for substitution of Horse (s) and Athlete(s), which may not be later than the day of the Horse inspection".*

114. The schedules for the Villeneuve-Loubet Events used the identical terminology by identifying one deadline *for* entries, the *"Definite Entries"* deadline, and one deadline for *"substitutions"*, *i.e.* the replacement of one athlete/horse with another athlete/horse. The Panel agrees with FEI that the language used in the schedules indicates that the Closing Date for Entries in Article 112.3 of the FEI GRs is referring to the definite entries deadline rather than the date for substitution, because the entry to an event is different from the substitution of a horse/rider combination. Importantly, the Villeneuve-Loubet Schedules mentioned that *"Entries have to be in accordance with Article 251 of the FEI Jumping Rules, 26th edition, effective 1 January 2019"*, thereby providing a direct link between the schedules and the FEI JRs. The schedules do not mention any additional deadline.

115. The definite entries deadlines set by the Organizer in the Initial Schedules versus the addition of Longines/Olympic Ranking points can be compared as follows:

Villeneuve-Loubet Event	**Definite Entries Deadline set by the Organizer**	**Addition of Longines Ranking Points**
13-15 December 2019	19 November 2019	26 November 2019
20-22 December 2019	26 November 2019	27 November 2019
27-29 December 2019	3 December 2019	5 December 2019
3-5 January 2020	10 December 2019	11 December 2019
10-12 January 2020	17 December 2019	19 December 2019
17-19 January 2020	24 December 2019	6 January 2020

116. This table illustrates that the Longines Ranking points were added for the respective Events after the definite entries deadline set by the Organizer.

117. Contrary to what the Appellants suggest, the Panel has not found any proof that it is common practice within the FEI to approve modifications to schedules of the same or similar significance as the changes made to the Updated Schedules. The FEI argued that after reviewing

every single schedule submitted by the Appellants only 6.9% could be regarded as "similar modifications", and the Appellants had only succeeded in showing that 0.1% of all FEI Jumping Events and 0.29% of the CSI 2* Events held between March 2018 and November 2019 (the period covered by the Schedules submitted by the Appellants) had a competition added after the definite entries deadline, which confirmed that those changes were not common practice within the FEI.

(ii) Does the late addition of Longines/Olympic Ranking points automatically constitute "justified circumstances"?

118. After the Panel has established that the addition of Longines/Olympic Ranking classes to certain competitions at the Villeneuve-Loubet Events was contrary to the FEI rules and regulations (*i.e.* constituted an infringement of the rules), the next question is whether this breach alone is sufficient for the establishment of *"justified circumstances"*. This is the view taken by the FEI. Indeed, it is the FEI's argument that the term *"justified circumstances"* is broad and that an infringement of the rules must always be considered a justified circumstance.

119. The Panel disagrees with the FEI's view. Although the Panel is mindful of the fact that the FEI principally enjoys broad discretion in making and applying its own rules, the genesis of Article 112.3 of the FEI GR's and the rationale given to this provision by the FEI itself in the FEI Memo speak against the broad interpretation offered by the FEI in this proceeding. The FEI Memo identifies as relevant for Article 112.3 of the FEI GRs only those rule violations which are *"going to the integrity of the Event"*. The FEI Memo also indicates what FEI means by the "integrity" of the event. It refers to the IOC's *"focus on integrity"* and the *"Model Rules on Betting and Anti-Corruption"* provided to the federations by ASOIF. The spirit of integrity means that events and competitions be shielded against manipulation and corruption, *i.e.* against any actions which jeopardize the most basic idea of fair competition, level playing field and equality. Not every infringement of the rules is necessarily an attack on the integrity of an event in that sense. For example, a wrong "field of play decision" taken by a referee without bad faith, bias or malice is – technically – also a rule violation, although it is clear that (under established CAS jurisprudence) such rule violation remains without consequences to protect the completion of events without disruption and the certainty of outcomes (on this notion see, *e.g.*, CAS 2017/A/5373, Award of 28 June 2018).

120. As a result, at least as far as events are concerned which have already been held, the FEI's responsibility to establish justified circumstances entails more than the proof of a simple rule violation. Importantly, it is also part of the integrity of an event that (barring specific exceptions such as bad faith or arbitrariness) its outcome need not be disrupted by litigation before courts of law or arbitration bodies (CAS 2017/A/5373, Award of 28 June 2018).

(iii) Do the circumstances surrounding the late addition of Longines/Olympic Ranking points constitute "justified circumstances"?

121. For the purpose of determining whether *"justified circumstances"* within the meaning of Article 112.3 of the FEI GRs have been demonstrated by the FEI, the Panel needs to assess the specific

circumstances surrounding the identified rule violation (late addition of the ranking competitions).

122. Its assessment leads the Panel to the conclusion that under the circumstances at hand, the FEI Secretary General's decision on the Removed Competitions was not permissible, and that the FEI Decision is unlawful.

123. The rule violation occurred when the FFE and the FEI approved the Updated Schedules despite the fact that the relevant addition of ranking classes was proposed by the Organizer after the definite entries deadline. The FEI consistently admitted before and during these proceedings that the approval of the Updated Schedules with added ranking competitions happened as a result of a "human error" within the FEI. In other words, without such a "human error", the FEI would most likely have discovered that the ranking classes had been added by the Organizer after the definite entries deadline and could, therefore, not become part of the Updated Schedules. In short, without the FEI's "human error", the rule violation which motivated the FEI Decision would not have occurred. It is, however, not the purpose of Article 112.3 of the FEI GRs to allow the FEI to retroactively rectify mistakes which entirely stem from its own sphere.

124. The FEI itself demonstrated the facts which let the Panel conclude that the mistake happened within the FEI's sphere. During these proceedings, the FEI emphasized that it retains overall control of the schedules of all FEI events, and that regardless of what a national federation (such as the FFE in the case of the Villeneuve-Loubet Events) approves, the final approval always rests with the FEI. It appears to be the very purpose of the two-stage approval process involving two separate review instances (the NFs and the FEI) to make sure that only those schedules are approved which are compliant with the relevant rules and regulations for FEI events.

125. While the Panel understands that the amount of schedules which the FEI has to approve every year is immense, the large number of schedules does not discharge the FEI of its responsibility to ensure that the schedules comply with FEI's rules. This is particularly true for competitions taking place at the end of the year shortly before the closing of the ranking lists which count for the qualification to the Olympic Games. The addition of Longines/Olympic Ranking points to a schedule is not an insignificant detail. Because of the key impact the number of ranking points has for the overall Longines and Olympic Ranking lists, the FEI must be expected to apply utmost care in its review process, especially for those events taking place shortly before the closing of the ranking lists. Utmost care means that the FEI cannot justify an oversight with the argument that it relied on the NF's authorization. Such reliance on a third party's previous review would stand in direct contradiction to the FEI's own concept that it retains the final and overall control over all schedules and at all times.

126. The very fact that the FEI's own negligence caused the rule violation is a crucial circumstance speaking against the FEI Secretary General's authority to retroactively remove the Villeneuve-Loubet Ranking competitions. It was within the FEI's own hands to ensure that the Villeneuve-Loubet Events would be held in compliance with the relevant rules and regulations, and that the late addition of ranking classes proposed by the Organizer would not be authorized. As

mentioned earlier, it is not within the rationale of Article 112.3 of the FEI GRs to allow for a retroactive removal of an event to the extent that compliance of such event with the applicable rules and regulations is within FEI's control. Rather, the purpose of Article 112.3 of the FEI GRs is to equip the FEI Secretary General with an effective instrument to intervene when he or she becomes aware of circumstances jeopardizing the integrity of an event without the FEI having had any chance to prevent such circumstances before or during the affected event. These rare scenarios are, in fact, precisely those in which the FEI Secretary General made use of her authority under Article 112.3 of the FEI GRs in the past:

- In 2018, the FEI Secretary General relied on Art 112.3 to remove the results of a Youth Olympic Games (YOG) Qualifier held in Tashkent (UZB) after it emerged that the appointed Foreign Judge had not actually attended the event and had submitted a false report. The role of the Foreign Judge was to certify that the course complied with the specific requirements of a YOG Qualifier given that the course for all YOG Qualifiers worldwide needed to be identical to ensure a level playing field (FEI Tribunal Decision 2018-04, FEI v Ilvira Jogina, 26 April 2018).

- In 2016, the FEI decided that the results from the CSI 3* Grand Prix Special held in Lier (BEL) would not count towards the Olympic and World Rankings after finding that two Ukrainian judges had engaged in nationalistic judging in favour of a Ukrainian athlete (FEI Press Release: https://inside.fei.org/ news/fei-removes-lier-grand-prix-special-results-olympic-rankings).

127. On the FEI's own account, the justification for these decisions, which had a significant impact on the participating athletes (who lost their points despite the fact that they had not breached any rules), was that the FEI simply had *"no independent way of verifying that the* [event] *took place in conformity with the FEI Rules and Regulations"* (FEI Tribunal Decision 2018-04, FEI v. Ilvira Jogina, 26 April 2018 at paragraphs 1.8 and 3.6).

128. In the present case, exactly the opposite is true. The rule violation would never have occurred without the FEI's erroneous authorization of the Updated Schedules. The Organizer could not have implemented the updates without permission of both the FFE and FEI. Hence, even if the FEI's allegation were true that the Organizer's late adding of Longines Ranking competitions to the Villeneuve-Loubet Events was the attempt to ensure that only those athletes "handpicked" by him (including his own son) would have the opportunity to earn valuable Longines and Olympic Ranking points, he could never have implemented the alleged manipulation of the events without the FEI's mistake.

129. The Panel notes that it has not found any proof that the Organizer, for the purpose of getting the FFE's and the FEI's authorization of the Updated Schedules, engaged in fraudulent behaviour or acted in bad faith to trick the FEI into an approval it should never have given. In this context, the Panel does not accept the FEI's proposition that the phone call the Organizer made to the FEI at the end of November, before adding the ranking competitions, was the deliberate attempt to get green light for his scheme from an inexperienced junior staff member of the FEI, already knowing that his desired changes were not permitted under the FEI's rules. This explanation is unpersuasive. First, the FEI staff should know its own invitation and

schedule approval rules, irrespective of seniority level. Second, the fact that the Organizer did the same thing exactly one year earlier (late addition of ranking points after the definite entries date) without the FEI reacting to this irregularity could be taken as an indication to believe that the timing of the addition of ranking classes was appropriate. Third, if it was really the plan of the Organizer to "sneak in" the ranking classes after the relevant deadline, he would most likely not have alerted the FEI of his plan by calling the administration to ask whether the changes were permissible. Rather, he would simply have submitted the Updated Schedules in the hope that they would be approved by the FEI. As a result, the Panel is not convinced of the FEI's theory that the Organizer was smarter than the FEI itself and deliberately tricked the latter into the approval of the Updated Schedules.

130. The Panel also rejects the FEI's accusations against the Organizer in respect of the number and identity of the federations and athletes he invited to the Villeneuve-Loubet Events. The FEI's complaint about the Organizer's "established pattern" of adding ranking points after the definite entries deadline with a view to "cherry pick" some participants to the exclusion of others glosses over the fact that the identified "significantly unequal conditions" allegedly created by the Organizer's selections were a result of the FEI's previously applicable invitation system for CSI 2* events, which granted an organizer full freedom in the selection of the federations and riders, and FEI's mistake to authorize the added ranking competitions after the definite entries deadline. Remarkably, as the FEI explained in its Answer, the 2016 FEI Invitation Rules, which allocated certain quotas that applied to invitations based on (i) the Longines Rankings, (ii) Home Athletes, (iii) Foreign Athletes, (iv) OC "Wildcards"; and (v) FEI Invitations for the purpose of providing a level playing field and equal competitive conditions, only applied to CSI 3*, CSI 4* and CSI 5* events, but not to CSI 2* events. Therefore, an organizer of a CSI 2*, such as the Organizer of the Villeneuve-Loubet Events, was free to invite whomsoever he wished to participate in his event and could even limit which NFs could send athletes and which NFs were not invited. However, if the organizer of an event is granted complete freedom regarding the number and selection of participants because no quota system for the type of event he organizes is in place, the FEI cannot later complain about the choices made by the organizer.

131. In its Answer, the FEI devotes several paragraphs complaining about the "bizarre" selection of foreign federations invited by the Organizer of the Villeneuve-Loubet Events, and about his motives for inviting certain federations (such as the SRI-NF) to the exclusion of others. The simple truth is that the FEI's invitation system permitted the Organizer's choice of federations and athletes. Effective as of February 2020 (immediately after the Villeneuve-Loubet Events), a new online invitation system for FEI Jumping events came into effect, which, for the first time, implemented a quota system for CSI 2* events. This quota system, however, did not apply to the Villeneuve-Loubet Events.

132. In conclusion, the problems with the allegedly unequal conditions of the Villeneuve-Loubet Events were inherent to the FEI's own invitation system at the time. These problems were aggravated by the fact that the FFE and the FEI approved the addition of ranking classes contrary to their own regulations. As stated earlier, the FEI Decision attempted to rectify a situation that arose entirely within the FEI's own sphere. There was no external attack on the integrity of the Villeneuve-Loubet Events when the FEI approved the Updated Schedules.

133. Furthermore, the Panel finds that the FEI has not proven that the appealing athletes – Mr. Herck and Ms. Karlsson – were aware of the irregularity of the Villeneuve-Loubet Events and that they intentionally sought to exploit the FEI's mistake. Indeed, the FEI suspects, but does not prove, that Mr. Herck and Ms. Karlsson were pre-informed by the Organizer of the line-up/entries. The FEI also argues, alternatively, that the athletes must have been aware of the alleged scheme to give maximum opportunities to a group of hand-picked athletes to earn ranking points to the exclusion of the vast majority of their competitors/rivals and that, given the very low numbers of participants, they stood to personally benefit from this by earning an above average amount of Longines Ranking/Olympic Ranking points just by participating in the competitions in question. Again, the fact that the Organizer set a low number of participants and invited NFs/athletes following his own preferences is not in itself suspicious, given that these choices were explicitly allowed by the FEI's invitation system for CSI 2* events. The Panel does also find it normal that athletes check the schedules to obtain information about the number of participants, invited federations and ranking points to be earned, and that these factors influence their choice of events. Hence, it is not reprehensible that Ms. Karlsson and Mr. Herck decided to participate in the Villeneuve-Loubet Events because they had identified a good chance to earn ranking points. Particularly in the case of Ms. Karlsson, who was competing for Olympic Ranking points shortly before the closing of the rankings, it made sense to choose an event that is not only close to her location (which was in France at the time), but also offered her the opportunity to win ranking points. The Panel also understands that the Villeneuve-Loubet Events, by tradition, where not highly-frequented events.

134. Hence, the mere fact that the set-up of the Villeneuve-Loubet Events provided a good opportunity to earn points for the Longines/Olympic Rankings, and that these conditions influenced the decision of the Appellants to participate in these events, does not constitute bad faith on the part of the Appellants. The Panel is also not convinced that the athletes could have known that the FEI made a mistake when it approved the Updated Schedules after the definite entries deadline. In fact, not even the FEI's own administration understood at the time that the addition of ranking classes after the definite entries deadline was prohibited, as the information provided to the Organizer in the phone call in November 2019 demonstrates. The system of numerous different deadlines applicable under the FEI's rules and regulations is not easy to understand, and it cannot be expected from a rider who reviews the schedules for an event that he or she readily discovers a mistake that two federations (FFE and FEI) with professionally equipped administrative bodies have overlooked.

135. In this context, it is irrelevant whether the athletes can rely on the doctrine of "legitimate expectations", as argued by the Appellants and as denied by the FEI. This doctrine is not the applicable standard for the decision in the present case. The applicable standard is whether "justified circumstances" could be established by the FEI for the retroactive removal of the ranking competitions. Based on the analysis in the preceding paragraphs, the Panel concludes that in consideration of the rationale of Article 112.3 of the FEI GRs, no such "justified circumstances" have been established by the FEI.

b. "Justified circumstances" due to other alleged irregularities surrounding the Villeneuve-Loubet Events?

136. The ECIU Report commissioned by the FEI raised integrity concerns not only with respect to the entry process, but also with respect to the payment, or lack thereof, of prize money to French riders. It is in dispute between the Parties whether and in what form riders had to be paid their prize money, and whether alleged agreements under French law between the Organizer and certain riders were permitted to be taken.

137. The Panel finds that for the purpose of these proceedings, the issue is moot. It is not in dispute that the FEI Decision is not based on these additional circumstances addressed in the ECIU Report. The FEI Decision solely relies on the addition of the ranking classes after the definite entries deadline. FEI clearly confirmed this premise during these proceedings. Consistent with this approach, the FEI Secretary General only removed those competitions of the Villeneuve-Loubet Events from the calendar for which ranking points were added after the definite entries deadline. The other competitions remained unaffected and stand in place.

138. Any reliance on additional integrity concerns would have necessarily affected the Villeneuve-Loubet Events in their entirety and would have deprived FEI of the opportunity to remove only certain selected competitions. Therefore, the additional integrity concerns must be left out of consideration and cannot provide "justified circumstances" for the removal of the competitions under review.

3. Summary

139. In summary, the Panel finds that the FEI has failed to establish "justified circumstances" for the removal of the competitions, that the prerequisites of Article 112.3 of the FEI GRs were, therefore, not fulfilled, and that – as a consequence – the FEI Decision as well as the Appealed Decision are unlawful and must be reversed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by Mr. Andrea Herck on 25/29 June 2020 and Ms. Mathilda Karlsson and the Sri Lanka Equestrian Association on 30 June 2020 against the decision rendered on 16 June 2020 by the Fédération Equestre Internationale (FEI) Tribunal are upheld.

2. The decision rendered on 16 June 2020 by the FEI Tribunal and the decision rendered on 17 February 2020 by the Fédération Equestre Internationale (FEI) Secretary General are set aside.

3. All competitive results obtained by Mr. Andrea Herck and Ms. Mathilda Karlsson between 13 December 2019 and 26 January 2020 at the CSI 2* events in Villeneuve-Loubet, including any points earned counting for the Longines Ranking and the Olympic Ranking, are reinstated.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.