



**Arbitration CAS 2022/A/8569 Sheikh Ali Al Thani v. Fédération Équestre Internationale (FEI), award of 21 April 2023 (operative part of 2 June 2022)**

Panel: Mr Jeffrey Benz (USA), Sole Arbitrator

*Equestrian (jumping)*

*Doping (carboxy-THC)*

*Out-of-competition use*

*In-competition-use*

*Ineligibility and disqualification*

1. An athlete who has consumed a substance of abuse, such as cannabis, can be sanctioned with a reduced period of ineligibility ranging between one to three months under the 2021 FEI Anti-Doping Rules for Human Athletes (“ADRHA”), if the use occurred out-of-competition and is unrelated to sport performance. He bears the burden to demonstrate that he falls within the scope of these new regulations (by way of transitional provisions or *lex mitior*), and that he meets their conditions on the balance of probabilities. He cannot claim a reduction when the high concentration levels found in his sample highlight recent consumption and/or that his violation could result from passive exposure to the substance in a shisha bar at the event.
2. An athlete who has consumed cannabis in-competition shall receive a standard period of ineligibility of two years, subject to any reduction based on no fault or no significant fault or negligence, if he can establish how the prohibited substance entered his system. In order to be eligible for no fault or negligence, he must also prove that he did not know or suspect that he committed an antidoping rule and, for non-significant fault or negligence, that his fault/negligence was non-significant and unrelated to sport performance. He cannot claim to have committed no fault or negligence when his version of the facts (daily out-of-competition consumption and/or passive exposure in a shisha bar) implies that he knew the consequences of his actions. Nevertheless, he may possibly rely non-significant fault or negligence, depending on his objective and subjective degree of fault, even if he used the substance for stress management and sleep improvement purposes.
3. The period of ineligibility shall start on the date of the final hearing decision providing for ineligibility or, in the absence of hearing, on the date ineligibility is accepted or otherwise imposed. It can, however, be backdated to the date of sample collection if the first instance proceedings suffered substantial delays that are not attributable to the athlete. It must be accompanied by the disqualification of all results, including forfeiture of all medals, points and prize money.

## **I. PARTIES**

1. Mr Sheikh Ali Al Thani (the “Athlete” or the “Appellant”) is an international level athlete of Qatari nationality participating in the discipline of Jumping. He is registered with the National Equestrian Federation of Qatar.
2. The Fédération Equestre Internationale (the “FEI” or the “Respondent”) is the worldwide governing body for the equestrian sport disciplines of jumping, dressage and para-dressage, eventing, driving and para-driving, endurance and vaulting, recognized as such by the International Olympic Committee. The FEI is headquartered in Switzerland.
3. The Appellant and the Respondent are jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. The present appeal is brought by the Athlete against the decision rendered by the FEI Tribunal on 17 December 2021 (the “Decision”), according to which the Athlete was found guilty of having breached Article 2.1 of the FEI Anti-Doping Rules for Human Athletes (the “ADRHA”) as a result of the presence of the prohibited substance (above a threshold) Carboxy-THC in his sample, and was therefore sanctioned with ineligibility for a period of 2 years.
5. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced and at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

### **A. Background Facts**

6. From 10 to 13 October 2019, the CSIO4\* event took place in Rabat, Morocco (the “Event”).
7. The Appellant travelled from his place of residence, the Netherlands, to Rabat, Morocco, on 8 October 2021 to participate in the Event. He participated in the Event as an individual athlete, but the Event also counted as a Designated Olympic Qualifier for Group F, i.e. the Olympic Qualifier Group for Africa/Middle East for the Qatari team.
8. During his stay in Rabat, the Athlete stayed with the entire Qatari team at the Sofitel Hotel at Impasse Souissi in Rabat, Morocco.
9. On 13 October 2019, urine samples were taken from the Athlete for testing under the ADRHA. The samples were divided into an A sample and B sample and sent to the WADA

Accredited Laboratory, the *Laboratoire Suisse d'Analyse du Dopage* Lausanne, Switzerland (the "Laboratory") for analysis. The Athlete's samples were given reference number 4479560 (collectively, the "Sample").

10. The Laboratory analysed the Athlete's A sample and reported an Adverse Analytical Finding ("AAF") of Carboxy-THC in the urine sample. Carboxy-THC is a metabolite of Cannabis. Cannabis is listed in class *S8 - Cannabinoids*, and considered a "Specified Substance", under the 2019 WADA Prohibited List. Cannabis and its metabolite Carboxy-THC are prohibited in competition. The estimated concentration in the sample was 404 ng/mL.
11. Pursuant to the WADA's Guidance note for Anti-doping Organisations for Substances of Abuse under the WADA Code 2021 "*Presence of carboxy-THC at a concentration above (>) the Decision Limit (DL) of 180 ng/mL should be considered most likely to correspond to an In-Competition use of cannabis*".
12. This positive finding of Carboxy-THC in the Athlete's sample in competition therefore gave rise to an Anti-Doping Rule Violation ("ADRV") under Article 2.1 of the ADRHA.
13. On 6 January 2020, the FEI legal department therefore notified the Athlete and the Qatari national team of a violation of Article 2.1 of the ADRHA based on the Laboratory's Adverse Analytical Finding of Carboxy-THC in the Athlete's Sample collected out-of-competition and the potential consequences (the "Notice of Charge"). The Notice of Charge informed the Athlete of his right to request the B sample to be analysed and that in accordance with Article 7.9.2 of the ADRHA, the Athlete was not provisionally suspended, since the substance found in the Sample was a "Specified Substance".
14. The Athlete requested the B sample to be analysed, and the results of the B sample were notified on 24 January 2020. The B sample confirmed the analysis results of the A sample.

## **B. Proceedings before the FEI Tribunal**

15. On 24 January 2020, the FEI requested the automatic disqualification of the results in accordance with Article 9.1 of the ADRHA.
16. On 15 February 2020, the FEI Tribunal rendered a partial decision according to which the Appellant's results at the competition on 13 October 2019 were disqualified in their totality and would not count for the calculation of any team results on that day of the Event.
17. On 26 May 2021, the FEI submitted the proceedings with regard to the merits of the case and filed its Response. The FEI also requested a hearing panel to be appointed in order to adjudicate this matter.
18. On 25 June 2021, the FEI Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate this case and invited the Athlete to answer the FEI's correspondence, which the Athlete did not do.

19. On 17 December 2021, the FEI Tribunal rendered the following decision (the “Decision”):

*“1) The Tribunal rules that the FEI has established an Anti-Doping Rule violation to the comfortable satisfaction of the Tribunal and notes that the results of the A and B Samples taken from the Athlete at the Event confirming the presence of Carboxy-THC constitutes sufficient proof of the violation of Article 2.1 of the ADRHA. Accordingly, the Tribunal upholds the charge that the Athlete violated Article 2.1 of the ADRHA.*

*2) The Athlete shall incur:*

*a) a period of Ineligibility of two (2) years. The period of the Ineligibility will be effective from 17 June 2021, therefore, the Athlete will be ineligible until 16 June 2023;*

*b) A fine in the amount of seven thousand five hundred Swiss Francs (7,500 CHF); and*

*[...]”.*

20. The reasoning of the Decision can be summarised as follows:

*“53. The Tribunal considers the suggestion that the source of the Athlete’s AAF was the result of unknowing exposure to cannabis during his residence in Rabat through sabotage merely speculative and notes that no corroborating evidence was ever presented during these proceedings notwithstanding the alleged efforts by the Athlete to attain such evidence from the hotel at Rabat, Morocco.*

*54. The Tribunal further notes that upon weighing the proofs and evidence remitted by the Appellant and taking into account the arguments as detailed at paragraph 26 of this Decision, that a modus operandi existed by a person or group of persons connected to (or acting on the instruction of) the Moroccan team to commit illegal sabotage in the form of tampering with the shisha tobacco, such conclusions cannot be formed.*

*55. As confirmed by various CAS panels as well as FEI Tribunals, the Athlete has to present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the Athlete. The Athlete’s scenario has to reach a 51% threshold for it to be successful. In this case, the Athlete only suggested a scenario of sabotage by another team at the hotel’s shisha bar. In addition, upon further requests for more information and explanations of the case, the Athlete provided limited explanations to substantiate the allegations. As a result, the Tribunal considers that the Athlete’s submission did not reach the threshold requirement on a balance of probabilities, and furthermore that the scenario of sabotage suggested would require extensive explanations, investigations and corroborating evidence to reach any consideration of such threshold by the Tribunal.*

*56. Consequently, the Tribunal accepts that without any further evidence, apart from hypothetical allegations, no causal link can be established that the prohibited substance Carboxy-THC entered the Athlete’s system through criminal sabotage by another team. Accordingly, a reasonable explanation has not been provided and as such the Tribunal confirms that under these circumstances, the Athlete has failed to establish how the prohibited substance entered his system.*

57. Consequently, and as already noted at paragraph 28 of this Decision, where a Prohibited Substance is returned in an Athlete's sample, a clear and unequivocal presumption arises under the ADRHA that it was used or administered deliberately, in an illicit attempt to enhance his or her performance. As referenced by the FEI this mirrors the World Anti-Doping Code, under which exactly the same presumption applies, e.g., *Eder v Ski Austria*<sup>10</sup>, "Athletes have a rigorous duty of care towards their competitors and the sports organization to keep their bodies free of prohibited substances. Anti-doping rule violations do not 'just happen' but are, in most cases, the result of a breach of that duty of care. This justifies (i) to presume that the athlete acted with fault or negligence and (ii) to shift the burden of proof from the sanctioning body to the athlete to exonerate him- or herself".

58. In this sense, the Tribunal notes that the Athlete was aware that "kiep" is cannabis and that it was usually utilised instead of shisha tobacco in Morocco, yet they still frequented the shisha bar regularly with their team members during an Event. This, in itself cannot be held in line with the duty of care by exposing themselves to the potential risk of ingestion of a prohibited substance. The Tribunal considers that utmost caution was not exercised by the Athlete to avoid the ingestion of any prohibited substances.

59. Bearing in mind the reasoning above and upon consideration of art. 10.2.2 of the ADRHA, a two-year period of ineligibility should be imposed unless the Athlete has satisfied the Tribunal that the period can be reduced. In this regard the Tribunal only deems Article 10.11.1 of the ADRHA applicable, in respect of "Delays Not Attributable to the Athlete or other Person" and notes that; "Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person the FEI Tribunal may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified".

60. Additionally, the Tribunal takes in account Article 4.2 of the ISRM and the principle of "Timeliness", wherein "In the interest of fair and effective sport justice, anti-doping rule violations should be prosecuted in a timely manner. Irrespective of the type of anti-doping rule violation involved, and save for cases involving complex issues or delays not in the control of the Anti-Doping Organization (e.g. delays attributable to the Athlete or other Person), Anti-Doping Organizations should be able to conclude Results Management (including the Hearing Process at first instance) within six (6) months from the notification..." and 8.8 c) of the ISRM which states that "the Hearing Process shall be conducted within a reasonable time [...] save in complex matters, this timeframe should not exceed two (2) months".

61. In line with which, the Tribunal recognises the slow advancement of these proceedings. The samples were collected on 13 October 2019, results were informed on 6 January 2020, the FEI issued the official notification of charge under the ADRHA<sup>11</sup> to the Appellant on 6 January 2020 and requested the intervention of the FEI Tribunal for a partial decision on 29 January 2020. Said decision was passed on 15 February 2020. From that moment on and until the formal passing of the case file to the FEI Tribunal more than 14 months passed with no clear explanation provided as to such delay. Such tardiness cannot be simply omitted. Moreover, it is to be noted that a Decision on partial disqualification was already passed against Sh. Al Thani in the terms described above.

62. In view of the above, the Tribunal holds that Article 10.11.1 of the ADRHA should be applied and as such the period of ineligibility is to be started at an earlier date. Accordingly, the Tribunal imposes a period of

*Ineligibility at an earlier date in order to reduce the sanction on ineligibility. Furthermore, due to the failure of the FEI to ensure that timeliness was at the forefront of the result managements process in this particular case, the Tribunal refers to previous caselaw of the Tribunal [...] and decides to backdate the start of the ineligibility period 6 months prior to the notification of the present Decision. Thus, in terms of ineligibility for the purposes of this present case the Tribunal imposes the period of Ineligibility of 2 years to start on 17 June 2021”.*

21. The Decision was notified to the Athlete on 17 December 2021.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 4 January 2022, the Athlete filed, in accordance with the Code of Sports-related Arbitration (the “Code”), a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the FEI with respect to the Decision, requesting an expedited procedure in accordance with Article R52 of the CAS Code including a suggested expedited calendar. In addition, the Appellant appointed Mr Jeffrey Benz, Attorney-at-law and barrister in London (UK), as an arbitrator.
23. On 6 January 2022, the CAS Court Office invited the FEI to comment on the suggested expedited calendar and to nominate an arbitrator. Moreover, the CAS Court Office invited the Appellant to file his Appeal Brief within the prescribed time limit. Finally, the Parties were requested to inform the CAS Court Office whether they agree to submit the present procedure and the parallel procedure *CAS 2022/A/8570* to the same Panel.
24. On 13 January 2022, the Appellant informed the CAS Court Office that the Parties agreed on an expedited calendar, which included a decision (with operative part only) to be rendered by the CAS on 10 June 2022 at latest, and that the procedure *CAS 2022/A/8569* and *2022/A/8570* be referred to the same Panel. Finally, the Parties agreed that both procedures *CAS 2022/A/8569* and *2022/A/8570* be referred to a Sole Arbitrator and that Mr Jeffrey Benz, Attorney-at-law and barrister in London (UK), be jointly nominated as Sole Arbitrator in both cases. On the same day, the FEI confirmed its agreement with the content of the Appellant’s letter.
25. The Appellant filed its Appeal Brief on 3 March 2022 with the CAS Court Office.
26. On 14 March 2022, the CAS Court Office informed the Parties that the Panel appointed to decide on the present matter is constituted as follows:

Sole Arbitrator: Mr Jeffrey Benz, Attorney-at-law and barrister, London, United Kingdom

The CAS Court Office also informed the Parties that the Sole Arbitrator will be assisted in the present matter by Ms Stéphanie De Dycker, CAS Clerk.

27. On 24 March 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter and consulted the Parties about possible hearing dates.

28. On 7 April 2022, the CAS Court Office informed the Parties that a hearing will be held in the present matter on 10 May 2022, by videoconference, and invited the Parties to communicate the list of hearing attendees as well as a tentative hearing schedule.
29. On 14 April 2022, the FEI provided its list of hearing attendees.
30. On 22 April 2022, the FEI filed its Answer with the CAS Court Office.
31. On 27 April 2022, the CAS Court Office, on behalf of the Sole Arbitrator, issued an order of procedure (the “Order of Procedure”) in the present proceedings and requested the Parties to return a signed copy of it, which both Parties did on 2 May 2022.
32. On 29 April 2022, the Appellant submitted the list of participants to the hearing as well as a tentative hearing schedule that was agreed upon by both Parties.
33. On 9 May 2022, the Appellant provided the CAS Court Office with an amended hearing schedule agreed upon by both Parties.
34. On 10 May 2022, a hearing was held in the present matter by videoconference. In addition to the Sole Arbitrator, Ms Andrea Sherpa-Zimmermann, CAS counsel, and Ms Stéphanie De Dycker, CAS Clerk, the following persons virtually attended the hearing:  
  

<u>For the Appellant:</u>	Mr Sheikh Ali Al Thani, the Athlete Mr Jan Kleiner, Legal counsel Mr Lukas Stocker, Legal counsel Mr Ihar Nekrashevich, expert.
<u>For the Respondent:</u>	Ms Anna Thorstenson, FEI Legal counsel, Ms Ana Kricej, FEI Legal counsel Professor Dr. Dr. (h.c.) Marilyn A. Huestis, expert
35. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the Panel.
36. At the hearing, the Sole Arbitrator heard evidence from Professor Dr. Dr. (h.c.) Marilyn A. Huestis and Mr Ihar Nekrashevich, the experts appointed by each of the Parties. Before taking their evidence, the Sole Arbitrator informed the experts of their duty to tell the truth subject to sanctions of perjury under Swiss law. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine them. Each of them confirmed their expert opinion.
37. The Sole Arbitrator thereafter heard the Athlete, who answered questions from each of the Parties as well as from the Sole Arbitrator.
38. The Parties thereafter were given full opportunity to present their case, submit their arguments and submissions and answer the questions from the Sole Arbitrator. At the end of the hearing,

the Parties confirmed that they were satisfied with the procedure throughout the hearing, and confirmed that their right to be heard had been fully respected.

39. On 2 June 2022, the CAS Court Office notified the operative part of the Award to the Parties.

#### IV. SUBMISSIONS OF THE PARTIES

40. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

##### A. The Appellant's Position

41. In his Appeal Brief, the Appellant requested as follows:

*"Based on the foregoing, the Claimant respectfully requests this honorable Tribunal to issue an award:*

- 1. Annuling the Appealed Decision.*
- 2. Not imposing any sanction on Appellant and not charging any financial punishment or consequence on Appellant.*
  - 2 A: In the alternative, reducing any sanction to a period of ineligibility of one (1) month;*
  - 2 B: In the further alternative, reducing any sanction at the discretion of the CAS Panel;*
  - 2 C: In any event, if a suspension is imposed, backdating the start date of any period of ineligibility to the day of sample collection, i.e. to 13 October 2019.*

*Appellant is willing to bear his own legal fees and to share with the FEI any possible procedural costs of this arbitration before CAS".*

42. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant accepts the Adverse Analytical Finding and the fact that he committed an ADRV under the rules applicable at the time. He submits however that he should benefit from the fact that in application of more recent rules, consumption of cannabis is sanctioned in a significantly lighter manner.
- He admits that he consumed hashish and marijuana (both forms of cannabis) in large amounts, on a daily basis until just before travelling to Morocco on 8 October 2019. His last consumption was therefore Out-Of-Competition. In the Appellant's view, the reported THC levels detected in the Sample are fully in line with such a consumption, in particular considering the high potency of THC products sold in the Netherlands where he was living for training purposes.



- In addition, the Athlete’s cannabis consumption was entirely unrelated to sport. His consumption occurred always after trainings and before going to bed to help him go asleep.
- Moreover, the Appellant cannot exclude that while spending time at the hotel shisha bar at the Sofitel Hotel in Rabat, he was exposed to passive smoking of cannabis, hashish or a substance called “kief” (in Morocco, a traditional mix of finely chopped cannabis and indigenous tobacco), but cannot determine this with certainty. The Team Manager specifically enquired as to how the shisha bar worked and what kind of shisha were prepared, and was informed by the responsible person that the shisha offered at the shisha bar of the hotel consisted of only tobacco mixed with fruit flavoring and that of course no illegal substances were used. For this reason, the Appellant bears No Fault or Negligence for such inadvertent exposure to a Substance of Abuse.
- Since carboxy-THC is a substance of abuse in the meaning of article 10.2.4 of the 2021 version of the ADRHA (the “2021 ADRHA”), an Out-of-Competition consumption of Carboxy-THC, which is unrelated to sport, triggers a standard period of ineligibility of three (3) months only, which can be reduced to one (1) month. Since the 2021 version of the ADRHA is more lenient than the 2015 version of the ADRHA applied by the FEI Tribunal, the Appellant shall, in accordance with the *Lex Mitior* principle, benefit from the more lenient rules, i.e. Article 10.2.4 of the 2021 version of the ADRHA. As a result, a maximum sanction of three (3) months of ineligibility shall apply; given the willingness of Appellant to undergo a therapeutic education session as provided for under the ADRHA, a further reduction to one (1) month is justified.
- In any event, unfortunately, the proceedings before the FEI Tribunal suffered from very serious delays. They lasted 20 months longer than what the International Standard for Results Management foresees. For this reason, in accordance with Article 10.11 ADRHA, any sanction that may be imposed must be backdated to the date of sample collection (13 October 2019), or at the very least by 20 months.
- In addition, the *de facto* self-suspension of Appellant as from 13 October 2019 justifies that no further period of ineligibility is imposed today and that he is re-admitted to competition immediately.

## **B. The FEI’s Position**

43. In its Answer, the FEI requested as follows:

*“a) to confirm the FEI Tribunal Decision and leave it undisturbed;*

*b) in accordance with Article 64.5 of the CAS Code of Sports-related Arbitration, to order the Appellants to pay all of the costs incurred by the CAS and payable by the Parties in these proceedings; and*

*c) in accordance with Article R.64.5 of the CAS Code of Sports-related Arbitration, to order the Appellant to pay a contribution towards the legal fees and other expenses (such as external scientific experts) incurred by the FEI in defending this appeal”.*

44. The FEI's submissions, in essence, may be summarized as follows:

- It is undisputed by the Parties that an anti-doping rule violation has occurred under Article 2.1 of the ADRHA. The Appellant bears the burden of proving the source, the alleged Out-Of-Competition Use and the alleged use unrelated to sport performance.
- The Appellant failed to demonstrate the source of the AAF: The Appellant's explanation that he is a regular user of cannabis is not supported by any evidence such as statements by the Appellant's entourage, receipts or credit card extracts. In addition, the Appellant's explanation lacks credibility, since, in the previous instance, he rather contended that the AAF was the result of an alleged sabotage by another team at the Event, and that he was subject to involuntary exposure to cannabis at the shisha bar of the hotel during his stay for the Event. The Appellant further fails to provide detailed facts and corroborated evidence which establishes that the AAF was the result of the alleged involuntary exposure to cannabis.
- Article 10.2.4.1 ADRHA could not apply in the present case since neither of the two requirements, i.e. that the use occurred Out-of-Competition and was unrelated to sport performance, are established:
  - ✓ In the present case, the concentration found in the Sample amounts 404 ng/mL, which is much higher than the decision limit of 180 ng/mL indicated in the WADA's Guidance note for Anti-doping Organisations for Substances of Abuse under the WADA Code 2021. This clearly indicates that the Athlete used cannabis In-Competition rather than Out-of-Competition. In order for the Appellant's explanation to be credible, the concentration found in the Appellant's sample 404 ng/mL is to match the use of cannabis 6 days prior to the sample collection. Prof. Huestis however confirms that the explanation provided by the Appellant that the concentration of cannabis in the Sample could be scientifically plausible to be reached by an out-of-competition use, is highly unlikely and not plausible.
  - ✓ Since the Appellant does not establish that the use was Out-of-Competition, it cannot be assured that such use was unrelated to sport performance either. Moreover, since the Appellant used cannabis when under pressure, to handle anxiety, such use cannot be considered as unrelated to sport performance.
- Since the Appellant failed to demonstrate the source of the AAF, no reduction of the standard ineligibility period for Specified Substances can apply in the present case. In any case, there can be no reduction on the basis of No Fault or Negligence since, by admitting being a regular user of cannabis, the Appellant must have suspected and even realized that his behavior could lead to an anti-doping rule violation. Moreover, the Appellant was

extremely imprudent and reckless in using cannabis in the upcoming days before the Event. Moreover, by smoking shisha at the shisha bar of the Sofitel Hotel during the Event, while knowing that “kief” i.e. cannabis was usually utilized instead of or mixed with shisha tobacco in Morocco, the Appellant acted imprudently.

## V. HEARING

45. At the hearing, the Panel heard evidence from Professor Dr. Dr. (h.c.) Marilyn A. Huestis and Mr Ihar Nekrashevich, the experts appointed by each of the Parties.
46. Before taking their evidence, the Sole Arbitrator informed the experts of their duty to tell the truth subject to sanctions of perjury under Swiss law. Their testimony can be summarized as follows:

### Mr Ihar Nekrashevich:

At the hearing, Mr Nekrashevich confirmed his written expert report, which states i.a. that, based on the concentration data available, it is not possible to calculate the most likely time of cannabis intake that could have caused the Sample result; and that in order to explain the Sample result, in a context where the Athlete did not use cannabis between 9 – 13 October 2019, the Athlete’s urinary metabolite concentration at the end of 8 October 2019 would need to have been approximately 2,700 – 4,500 ng/mL. Such a high concentration could only occur following the use of high doses of cannabis on a daily basis, i.e. approximately 104 average cannabis cigarettes per week (or 15 per day); or 35 cannabis-rich cigarettes per week (or 5 per day). The expert reported that whilst the scenario is pharmacokinetically possible, this value reflects only the lower end of the range for the Athlete and even higher doses would be required to cover the remainder of that range. For completeness, the expert stated that it is also possible that the Sample result could have been caused by the use of cannabis at some point between 9 – 13 October 2019.

### Professor Dr. Dr. (h.c.) Marilyn A. Huestis:

At the hearing, Professor Huestis confirmed her written expert opinion which states i.a. that it is highly likely (more than 51%) that the Athlete used cannabis within the 5.7-6.7 days after he indicated that he stopped his cannabis use (i.e. on 7 October); only 3.9% of chronic frequent cannabis users were positive at the WADA 175ng/mL reporting limit [...] 24-30 h after last use. The extended time frame of 138.3 to 162.3 h (5.7 to 6.7 days) beyond the 30h data reported, suggest that the Appellant’s explanation is not plausible. The WADA Decision limit under the 2021 WADC, i.e. 180 ng/mL is a very generous threshold. Moreover, according to Prof. Huestis, concluding that the athlete would need to have consumed x number of high potency cannabis cigarettes is wrong as it does not take into account the smoking typography of smokers.

47. Thereafter, the Sole Arbitrator heard the Athlete, who was subject to examination, cross-examination and questions from the Sole Arbitrator. His statement can be summarized as follows:

Mr Sheikh Ali Al Thani: The Athlete expressed his regrets for the manner with which his former legal counsel dealt with his case in the first instance. The discovery of the fact that he used to consume cannabis led to great embarrassment towards his entourage and family and serious disciplinary sanctions for him in Qatar as a result of his military activities in Qatar. The Athlete confirmed that at the time he used cannabis on a daily basis. He used to purchase from coffee shops paying cash and would consume at home alone. He would usually smoke 4 to 8 joints per day only at night before going to sleep and never before riding and trainings. He never consumed cannabis at shows or competitions nor in a country where it was prohibited; he never travelled with cannabis. He last consumed cannabis just before leaving for Morocco for the Event.

## VI. JURISDICTION

48. Article R47 of the Code provides as follows:

49. *“An appeal against the decision of a federation, association or sports-related body may be filed with 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.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”.*

50. Article 13.2 and 13.2.1 of the ADRHA provides that:

*“A decision that an anti-doping rule violation was committed [...] may be appealed exclusively as provided in this Article 13.2.*

*[...]*

*In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS”.*

51. The Sole Arbitrator notes that the Decision qualifies as a “*decision that an anti-doping rule violation was committed*”, and that the Athlete is an International-Level Athlete involved in an International Event.
52. The Sole Arbitrator therefore finds that CAS holds jurisdiction to decide on the present matter. Moreover, the Sole Arbitrator notes that jurisdiction of the CAS is not disputed by either Party and both signed the Order of Procedure, further evidence of acceptance and appropriateness of CAS jurisdiction.

## VII. ADMISSIBILITY

53. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties”.*

54. The Sole Arbitrator notes that the Statement of Appeal was filed with the CAS Court Office on 4 January 2022, i.e. within the time limit of 21 days from receipt of the Decision appealed against on 17 December 2021. Moreover, the other requirements provided for under Article R48 of the Code are also fulfilled. The appeal is therefore admissible.

## VIII. APPLICABLE LAW

55. Article R58 of the Code provides as follows:

*“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”.*

56. Article 38.3 of the FEI Statutes further provides that:

*“All disputes shall be settled in accordance with Swiss law”.*

57. The Sole Arbitrator shall therefore apply FEI’s rules and regulations, in particular the FEI ADRHA, and, subsidiarily, Swiss law as the law chosen by the Parties. Moreover, since the relevant facts occurred on 13 October 2019, the Sole Arbitrator shall, in principle, apply the ADRHA version that was effective as from 1 January 2015.

58. The Sole Arbitrator shall revert to the issue regarding the application of the 2021 ADRHA as a matter of *lex mitior* in the next section regarding the merits.

## IX. MERITS

59. In the present proceedings, the Athlete does not dispute the presence in the Sample of a prohibited substance, carboxy-THC, above the decision limit of 180 ng/mL provided for in the WADA’s Guidance note for Anti-doping Organisations for Substances of Abuse under the WADA Code 2021, which constitutes an ADRV under Article 2.1 of the ADRHA.

60. The present appeal only concerns the consequences to be applied to such ADRV. As a result of the Parties' requests and submissions, the Sole Arbitrator shall address the following issues:
- i. Shall the appropriate period of ineligibility be reduced based on the *Lex Mitior* principle?
  - ii. Shall the appropriate period of ineligibility be eliminated or reduced based on *No (Significant) Fault or Negligence*?
  - iii. What are the consequences of the above?

61. The Sole Arbitrator will consider each of those issues separately and in sequence.

**A. The *Lex Mitior* Principle**

62. The Appellant contends that he should benefit from more lenient rules that were adopted after the rules that were applied by the FEI Tribunal in the Decision. Indeed, while the 2015 version of the ADRHA provided for a standard 2-year period of ineligibility for an AAF of carboxy-THC, the 2021 version of the ADRHA substantially lowered the possible period of ineligibility to three months only, with a further possible reduction to one month, pursuant to article 10.2.4 of the 2021 ADRHA.

63. The FEI agrees with the applicability of the *Lex Mitior* Principle in theory, but submits that Article 10.2.4 of the 2021 ADRHA cannot apply in the present matter as the requirements for this provision to apply are not fulfilled.

64. The Sole Arbitrator first recalls that the *Lex Mitior* principle, which is provided for under the WADC (see Article 25.2 of the 2015 WADC and Article 27.2 of the 2021 WADC) and in the 2021 ADRHA (see Article 25.7.2 of the 2021 ADRHA), requires that, where a rule has been replaced in the meantime by a more lenient rule, the more lenient rule replaces the previous rule, to the benefit of the accused athlete. CAS case law continuously applied the *lex mitior* principle in its case law related to doping cases:

*“The lex mitior principle prevents the continued applicability of a disciplinary rule after it has been replaced by a more lenient one, and reflects, in favour of the accused, the evolution of a legislative policy, which translates into rules the opinion that the same infringement is less severe than it was previously perceived”* (CAS 2015/A/4005, para. 115; see also TAS 2000/A/289).

65. Moreover, the Parties agree with the applicability of the *lex mitior* doctrine as a matter of principle.

66. Article 10.2.4 of the 2021 ADRHA provides as follows:

*“10.2.4 Notwithstanding any other provision in Article 10.2, where the anti-doping rule violation involves a Substance of Abuse:*

*10.2.4.1 If the Athlete can establish that any ingestion or Use occurred Out-of-Competition and was unrelated to sport performance, then the period of Ineligibility shall be three (3) months Ineligibility.*

*In addition, the period of Ineligibility calculated under this Article 10.2.4.1 may be reduced to one (1) month if the Athlete or other Person satisfactorily completes a Substance of Abuse treatment program approved by the FEI. The period of Ineligibility established in this Article 10.2.4.1 is not subject to any reduction based on any provision in Article 10.6.4.*

[...].”

67. The Sole Arbitrator notes that according to the 2021 ADRHA, the Athlete would potentially be sanctioned with a period of ineligibility of three months with a possibility to further reduce such period to one month, which is a much more lenient treatment than the ADRHA, which provides for a standard period of ineligibility of two years.
68. However, the wording of Article 10.2.4 of the 2021 ADRHA makes it clear that such reduced period of ineligibility can only apply if the use of the substance of abuse – carboxy-THC being a substance of abuse under 2021 ADRHA – occurred Out-of-Competition and unrelated to sport performance.
69. The Appellant accepted that, since the FEI met its burden to establish, in principle, a violation of article 2.1 of the ADRHA, the burden is now upon him to show that his consumption of cannabis occurred Out-of-Competition and unrelated to sport performance. Furthermore, the Appellant accepts that he must meet this burden by the standard of balance of probabilities, which is also the view of the FEI. The Sole Arbitrator therefore shall verify whether such requirements are met in the case at hand.

**a. *Did the Athlete consume Cannabis Out-of-Competition exclusively?***

70. The Appellant admits that, while he was living in the Netherlands, he consumed cannabis on a daily basis and in large amounts: He would purchase from coffee shops paying cash and would consume at home alone. He would usually smoke 4 to 8 joints per day only at night before going to sleep and never before riding and trainings. He contends that he last smoked on 8 October 2019, just before leaving for Morocco for the Event; his consumption was therefore Out-of-Competition. The FEI contends that the Athlete did not provide enough evidence that he would smoke cannabis in large amounts while he was living in the Netherlands, and it is further not plausible that the Appellant consumed cannabis Out-of-Competition given the level in his Sample. According to the FEI, the concentration level in the Sample was way above the decision limit of 180 ng/mL provided in WADA’s Guidance Note for Anti-doping Organisations for Substances of Abuse under the WADA Code 2021, which indicates that the Athlete used cannabis In-Competition rather than Out-of-Competition. Moreover, Prof. Huestis confirmed that it is not plausible that the Appellant’s consumption was Out-of-Competition.

71. The Sole Arbitrator considers that the Athlete's statement, in which he admitted that he used to smoke cannabis in large amounts just in the period prior to the Event, is credible, especially considering the embarrassment such admission caused to him and his family in Qatar. Moreover, since he would purchase mostly in cash and smoke alone, it appears only normal that the Appellant did not produce any receipts for his purchases nor any testimony of his entourage in support of his admission. The Appellant however provided the name of the coffee shop where he would purchase cannabis joints and the type of joints he would smoke.
72. The Sole Arbitrator now turns to the question of whether the Appellant's consumption was Out-of-Competition. The Athlete bears the burden of proving, on balance of probabilities, that his consumption was Out-of-Competition. As a first remark, the Parties agree that, according to the FEI rules, the In-Competition period started at 13:00 on 9 October 2019. As a result, to be Out-of-Competition, the consumption needs to have been any time before 9 October 2019 at 13:00.
73. Mr Ihar Nekrashevich explained that *"it is impossible to calculate the most likely time of cannabis intake that could have caused the Sample result"*. The Sole Arbitrator accepts that this creates an evidentiary difficulty for the Appellant, which needs to be taken into account in the assessment of the evidence on record.
74. The Sole Arbitrator first notes that WADA's Guidance Note for Anti-doping Organisations for Substances of Abuse under the WADA Code 2021 provides as follows:

*"Presence of carboxy-THC at a concentration above (>) the Decision Limit (DL) of 180 ng/mL should be considered most likely to correspond to an In-Competition use of cannabis"*.
75. In the present matter, the concentration level found in the Sample amounts to 404 ng/mL. As a result, the concentration level most likely corresponds to an In-Competition use of cannabis within the meaning of the WADA Code. The Sole Arbitrator further notes that the In-Competition period according to the WADA Guidance Note [*"[t]he period commencing at 11:59 p.m. on the day before a Competition in which the Athlete is scheduled to participate through the end of such Competition and the Sample collection process related to such Competition"*] started at 11:59 pm on 9 October 2019. Therefore, the Sole Arbitrator notes that, according to the WADA's Guidance Note, the Athlete used cannabis in the period between 9 October on 11:59 pm and 13 October 2019.
76. At the hearing, the Appellant submitted that he last used cannabis just before leaving for Morocco for the Event on 8 October 2019. In support of his position, the Appellant produced the expert opinion of Mr Ihar Nekrashevich, who confirmed that it is *"pharmacokinetically possible"* that the Athlete *"used high doses of cannabis on a daily basis"*, such as *"104 average cannabis cigarettes per week"* or *"35 cannabis-rich cigarettes per week"*, in order for *"such a high concentration"* to be found in the Sample taking into account that *"the Athlete did not use cannabis between 9 – 13 October 2019"*.



77. The Sole Arbitrator is not convinced by the Athlete's expert's opinion on this point. Indeed, Mr Ihar Nekrashevich also stated in his expert opinion that "*it must be noted that this value reflects only the lower end of the range for the Athlete and even higher doses would be required to cover the remainder of that range*". Moreover, Mr Ihar Nekrashevich also stated that "*from a pharmacokinetic perspective – it is also possible that the Sample Result could have been caused by the use of cannabis at some point between 9 – 13 October 2019*", i.e. essentially in the In-Competition period.
78. Moreover, Prof. Huestis explained at the hearing that it was not plausible that the AAF resulted from the Athlete's Out-of-Competition consumption of cannabis. The Sole Arbitrator notes that the Appellant argued that Prof. Huestis had a predisposition because of her open academic position against cannabis spanning decades and within the WADA committee of which she is a member. The Sole Arbitrator is however not convinced about such objection which is not supported by any evidence on record: the fact that she has expressed an opinion in the framework of her scientific activities does not mean *per se* that her opinion in the present matter should be disregarded, though the Arbitrator accepts that if established it should be weighted in light of the evidence and the nature of the present dispute.
79. Finally, the Sole Arbitrator also notes that the Appellant argues that the AAF could also result from In-Competition passive or unintentional exposure to cannabis at the Shisha Bar of the Sofitel Hotel the Athlete was staying at during the Event. As a result, the Sole Arbitrator finds that the Athlete failed to demonstrate he consumed cannabis Out-of-Competition exclusively.

***b. Was the Athlete's consumption unrelated to sport performance?***

80. The Appellant contends that cannabis is today rightly considered as a substance of abuse because it is often used in a recreational context and because it clearly has no performance-enhancing effect for Equestrian sports. The Athlete therefore contends that his use is unrelated to sport performance. On the other hand, in the FEI's view, the fact that the Athlete used to smoke cannabis when under pressure to handle anxiety before going to sleep, clearly means that the Appellant's use cannot be considered unrelated to sport performance. The FEI also makes the point that the use of cannabis at any time near to riding horses creates a potentially dangerous situation.
81. The Sole Arbitrator first notes that, given the level of the cannabis metabolite in his Sample, since the Appellant failed to demonstrate that he used cannabis Out-of-Competition exclusively, one of the two cumulative requirements for Article 10.2.4 of the 2021 ADRHA to apply as *lex mitior*, is not fulfilled. As a result, there is no need to address the issue of whether or not the Athlete's cannabis consumption was unrelated to sport performance in order to assess the possibility to reduce the period of ineligibility on the basis of Article 10.2.4 of the 2021 ADRHA.
82. For the sake of completeness, however, the Sole Arbitrator finds that, in the context of the present case, the Athlete's consumption of cannabis is clearly unrelated to sport performance. The Athlete would smoke at night after training, which means that his consumption was always unrelated to, and occurred after, his sport activities as well as being in the context of a

very difficult personal period in his life. The Sole Arbitrator is moreover not convinced by the argument put forward by the FEI that the fact that merely because cannabis permitted the Athlete to sleep better, the substance has a sport performance-enhancing effect or purpose. Athletes take vitamins, and substances found on the Prohibited List which are allowed out of competition, to assist with recovery out of competition, and they eat food (including food designed to enhance athletic performance), sleep, and do other things that benefit their sport performance, and that simple desire to recover or sleep better or whatever is not *per se* a sport performance enhancing intention absent indicia of some other intention to enhance sport performance impermissibly. Simply trying to get through life, even life as an elite athlete, more comfortably, in a permissible manner, cannot, by itself, give rise to impermissible intention.

**c. Conclusion**

83. The Sole Arbitrator therefore finds that the Appellant's submission that the period of ineligibility shall be reduced on the basis of Article 10.2.4 of the 2021 ADRHA (*lex mitior*) is dismissed.

**B. The No (Significant) Fault or Negligence Assertions**

**a. Regulatory framework**

84. Since the FEI met its burden of proving the presence in the Sample of a prohibited substance, carboxy-THC above the decision limit of 180 ng/mL, which constitutes an ADRV under Article 2.1 of the ADRHA, the Athlete shall be subject to a standard period of ineligibility of two years, in accordance with Article 10.2.2 of the ADRHA subject to any reduction of the ineligibility period based on No Fault or Negligence or No Significant Fault or Negligence ("N(S)FN").
85. Pursuant to Article 10.4 of the ADRHA, "*If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated*".
86. According to the definition list in the ADRHA, No Fault or Negligence ("NFN") refers to the situation in which "*[t]he Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system*".
87. Moreover, pursuant to Article 10.5 of the ADRHA, "*Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault*".

88. According to the definition list in the ADRHA, No Significant Fault or Negligence (“NSFN”) refers to the situation in which “[t]he Athlete or other Person’s establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system”. Moreover, the footnote to the definition provides that: “For Cannabinoids, an Athlete may establish No Significant Fault or Negligence by clearly demonstrating that the context of the Use was unrelated to sport performance”.
89. Based on the above definitions, in order for the Athlete to be eligible for N(S)FN, he shall first establish how the prohibited substance entered his or her system.
90. Moreover, to establish NFN, the Athlete shall further establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he violated an anti-doping rule.
91. To establish NSFN, the Athlete shall establish that his fault or negligence, viewed in the totality of circumstances, was not significant in relationship to the anti-doping rule violation. Finally, since this matter concerns the consumption of cannabinoids, for the Appellant to establish NSFN, he shall demonstrate that the use of cannabis was unrelated to sport performance.
92. Finally, the Parties accept that the applicable standard of proof is that of balance of probabilities.
- b. Application in the case at hand**
93. The Sole Arbitrator shall first determine whether the Appellant established how the prohibited substance entered his system. In the present matter, the Sole Arbitrator already found that the Athlete successfully established that he would consume cannabis on a daily basis and in large amounts while he was living in the Netherlands prior to the Event (see above, para. 71).
94. The Appellant further submits that he may have been exposed to passive smoking of cannabis, hashish or kief, while smoking shisha at the Shisha Bar of the Sofitel Hotel in Rabat, Morocco, during his stay for the purpose of the Event. The written statement of the Qatari team manager, Mr Mohammed Al-Thani, confirms the Athlete’s visit to the Shisha Bar during his stay together with the rest of the team as well as the Team Manager’s enquiry at the Shisha Bar of the Sofitel Hotel as to how the shishas were prepared and the substances they contained. In his written statement, the Team’s Manager concludes that, “All the precautions were taken in order to avoid such contamination and the athletes were very strictly followed and supervised during the entire competition. The only way these positive samples can be explained should therefore be the fact that, unknown to the team and the athletes, cannabis (or kief) was mixed with the shisha they used in the lounge bar”.

95. The Sole Arbitrator accepts that (i) the Athlete, together with the other members of the Qatari team, spent some relaxing time at the Shisha Bar of the Sofitel Hotel in Rabat during the Event; (ii) the Team's Manager took some precautionary measures by enquiring as to the type of shisha that was prepared at the Shisha Bar and what type of substances the shishas contained. The Sole Arbitrator therefore finds that the Athlete established on the balance of probabilities, that – in addition to having consumed cannabis in large amounts prior to the Event on a daily basis– it cannot be excluded that, by spending time at the Shisha Bar of the Sofitel Hotel, the Athlete was exposed to passive smoking of cannabis, hashish or kief, as a result of other visitors in the Shisha Bar consuming such substances. As a result, the Sole Arbitrator finds that the Athlete successfully established how the prohibited substance entered his system.
96. However, in the Sole Arbitrator's view, since the Athlete used to consume cannabis in large amounts prior to the Event on a daily basis in the Netherlands where he used to live, and by confirming that he knew that cannabis was prohibited in some countries, that it was illegal to consume cannabis in competitions or to travel abroad with cannabis, it is clear that he knew or at least he ought to have known, that his actions might result in causing an anti-doping rule violation. The Sole Arbitrator therefore finds that the ineligibility period cannot be reduced on the basis of NSFN.
97. The Sole Arbitrator now turns to the examination of whether the Athlete's ineligibility period could be reduced based on NSFN. In order to establish NSFN, the Athlete may establish that his consumption of cannabinoids was unrelated to sport performance. The Sole Arbitrator already found that the Athlete's consumption of cannabis in large amounts on a daily basis prior to the Event at night after training, was unrelated to sport performance (see above para. 82). The same clearly applies to the Athlete's possible passive exposure to cannabis or kief, as a result of other visitors in the Shisha Bar consuming such substances: such visits to the Shisha Bar were of a purely recreational nature and unrelated to sport performance. The Sole Arbitrator therefore concludes that the Athlete's consumption of cannabinoids was unrelated to sport performance and the Athlete is therefore eligible for NFSN.
98. The issue of whether an athlete's fault or negligence is "significant" has been much discussed in the CAS jurisprudence, and chiefly so with respect to the various editions of the WADC (e.g., in CAS 2013/A/3327 & 3335 as well as *inter alia* CAS 2004/A/690; CAS 2005/A/830; CAS 2005/A/847; CAS OG 04/003; CAS 2006/A/1025; CAS 2008/A/1489 & 1510; CAS 2009/A/1870; CAS 2012/A/2701; CAS 2012/A/2747; CAS 2012/A/2804; CAS 2012/A/3029; CAS 2017/A/5301 & 5302). These cases offer guidance to the Sole Arbitrator. It is, however, to be underlined that all cases are "fact specific" and that no doctrine of binding precedent applies to the CAS jurisprudence.
99. In order to determine which category of fault or negligence is applicable in a particular case, CAS panels consider it helpful to analyse both the objective and the subjective levels of fault. While the objective element describes what standard of care could have been expected from a reasonable person in a given athlete's situation, the subjective element describes what could

have been expected from that particular athlete, with regard to his personal capacities (*See* CAS 2013/A/3327 & 3335; CAS 2016/A/4416).

100. The Sole Arbitrator observes that, in light of CAS jurisprudence (CAS 2013/A/3327 & 3335) as well as the subsequent amendments of the WADA Code and updated jurisprudence (CAS 2017/A/5301 & 5302), a distinction must be made between the following two categories of fault within the context of NSF:
- “normal” degree of fault: from 12 to 24 months with a standard normal degree leading to an 18-months period of ineligibility;
  - “light” degree of fault: from 0 to 12 months with a standard light degree leading to a 6-months period of ineligibility (cf. CAS 2017/A/5301, paras. 194-195; CAS 2016/A/4416; 2015/A/3876, para. 84).
101. In the present case, the Sole Arbitrator notes the following elements:

Against the Athlete:

- The Athlete is an adult educated man with a long sporting career, who has competed in the Olympic Games, and is therefore educated on anti-doping rules.
- The Athlete knew cannabis qualifies as a Specified Substance prohibited in-competition under FEI rules;
- The Athlete admitted that, while he was living in the Netherlands, he was a chronic cannabis smoker and that, as a result, he used to smoke large amounts of cannabis on a daily basis just prior the Event; and
- While in Rabat for the purpose of the Event, the Athlete chose to smoke shisha at the Shisha Bar of the Sofitel Hotel in Rabat, thereby running the risk of passive exposure to prohibited substances.

In favour of the Athlete:

- Smoking shisha is common practice in Arab countries;
  - The Athlete was staying in five-star hotel in Rabat (i.e. Sofitel Hotel) and his Team Manager had enquired about the composition of the shisha served at the Shisha Bar and how they were prepared.
  - The Athlete never tested positive before despite being a chronic consumer of cannabis.
102. In the present matter, the Sole Arbitrator finds that the Athlete’s objective level of fault is “light” *i.e.*, to be placed within the lower category within the context of the NSF analysis, but is at the upper limit of light fault. The Sole Arbitrator notes in this regard that the Athlete was quite imprudent since, despite knowing cannabis is prohibited in-competition, he ingested it

in large amounts and on a daily basis for a long period until, on his own admission, just before travelling to Morocco for the Event. Similarly, by smoking shisha at the Shisha Bar of the Sofitel Hotel during the Event, the Athlete accepted the risk of being passively or possibly actively exposed to cannabis or kief, which is often used instead or with the shisha tobacco in Morocco. The Sole Arbitrator is however sympathetic to the fact that the Team Manager had enquired about the shisha composition at the Shisha Bar of the Hotel and had been reassured as to the fact that it contained no illegal substance. In addition, the Athlete never tested positive before the AAF and this, despite being a chronic cannabis consumer, which could (mis)lead him to consider that he was exercising a sufficient standard of care. As a result, the Sole Arbitrator finds that the Athlete's appropriate period of ineligibility is one (1) year.

### **C. Consequences**

#### **a. Commencement of the Ineligibility Period**

103. Article 10.11 of the ADRHA provides as follows:

*"10.11 Commencement of Ineligibility Period*

*Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.*

*10.11.1 Delays Not Attributable to the Athlete or other Person*

*Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person the FEI Tribunal may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified".*

104. The Parties agree that the first instance proceedings before the FEI Tribunal suffered from substantial delays, which were - at least in part - not attributable to the Athlete. As a result, the Parties agree to apply Article 10.11.1 of the ADRHA (or corresponding Article 10.13.1 of the ADRHA 2021) in the present matter. The Sole Arbitrator therefore finds that the ineligibility period shall start on 13 October 2019, i.e. the date of the Sample collection, and end on 12 October 2020.

#### **b. Disqualification of Results**

105. Article 9.1 of the ADRHA provides as follows:

*"An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including*

*forfeiture of any medals, points and prizes. Where applicable, consequences to teams are detailed in Article 11”.*

106. Moreover, Article 10.1 of the ADRHA provides that “[a]n anti-doping rule violation occurring during or in connection with an Event may, upon decision of the ruling body of the Event, lead to Disqualification of all of the Athlete’s individual results obtained in that Event with all Consequences (and the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.”
107. Considering the above, the Sole Arbitrator finds that the Athlete must be disqualified, in accordance with Article 9.1 and 10.1 of the ADRHA, of all his individual results at the Event and during the period of ineligibility, with all consequences, as well as the resulting consequences to teams as provided under article 11, including forfeiture of all medals, points and prize money.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed on 4 January 2022 by Mr Sheikh Ali Al Thani against the Fédération Équestre Internationale (FEI) with respect to the decision taken by the Tribunal of the FEI on 17 December 2021 is partially upheld.
2. The operative part of the decision rendered by the Tribunal of the FEI on 17 December 2021 is confirmed save for the item 2) a), which is so amended:

“2.) *The Athlete shall incur:*

  - a.) *a period of ineligibility of one (1) year. The period of ineligibility will be effective from 13 October 2019 until 12 October 2020. All competitive results achieved by the Athlete during the period of ineligibility are disqualified”.*
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.