Arbitration CAS 99/A/246 W. / International Equestrian Federation (FEI), award of 11 May 2000

Panel: Prof. Massimo Coccia (Italy), President; Prof. Louis Dallèves (Switerland); Mr. Dirk-Reiner Martens (Germany)

Equestrian
Abuse of horses
Admissibility of evidence
Opportunity to produce exculpatory counter-evidence
Principle of proportionality

1. **According to Swiss law, the use of a lie detector, of narco-examination or of a truth serum as a method to establish the truth is not admissible on a constitutional basis. As a result, the CAS does not deem admissible as evidence a deposition based on a lie detector test. The CAS may take into consideration the declarations of persons in front of a polygraph as mere personal statements rendered by a party to the dispute and by a witness, with no additional evidentiary value whatsoever given by the circumstances that they were rendered during a lie detector test.**

2. **The FEI Regulations do not mention the possibility for the person responsible to produce conclusive evidence. However, taking into account the seriousness of the measures which may be pronounced against him or her and which are, moreover, akin to penal sanctions, there is no doubt that, by applying the general principle of sports law, the athlete must have the possibility to rebut charges by providing exculpatory evidence.**

3. **The severity of a penalty must be in proportion with the seriousness of the infringement. The penalties imposed by an international federation can be overruled when the penalties provided by the rules can be deemed excessive or unfair.**

The Appellant W., born on 17 October 1975, is a high level United States show jumping rider. The Respondent Fédération Equestre Internationale ("FEI") is the international federation governing international equestrian disciplines.

On 15 June 1999, W. competed at a FEI event in Germany, the 62nd CHIO Aachen Horse Show. He rode two horses in the class S1/section B. The second horse's name was B. This particular horse and the rider were listed as number 42 on the class S1/section B starting list.

During the competition, Mr. Hans Wallmeier, FEI Chief steward, decided to proceed to a bridle, bandage and boot control of the horses taking part in the class S1/section B. The control started with the horse bearing the number 32 on the starting list. Mr. Wallmeier planned to control 15 horses in this particular class. He was assisted by the veterinarian Dr. Franziska Kersten and the assistant Mr. Marco Müller-Dörr.

The control took place in the last warming-up area. This schooling area was the second warming-up place, where two fences were laid. It was situated just next to the main arena and competitors were allowed to enter it just shortly before they went into the main arena.

When W. entered this second warming-up place, he could notice that a bridle, bandage and boot control was taking place. He rode his horse for a few minutes in this last warming-up area and then entered the main arena. During the round, the horse knocked down one fence, a large white gate.

As soon as W. exited the ring, the officials called him for the inspection. Mr. L., W.'s personal groom, was holding the horse with a lead rope, while Dr. Kersten, the veterinarian, proceeded to inspect the horse. W. was standing nearby.

While Dr. Kersten was proceeding to the control, Mr. L. took off the front left boot without being asked to. He was then told by Dr. Kersten not to do so. After she had checked the horse's mouth and the horse's flanks, she proceeded to control the horse's legs. She started with the front right leg. At this moment, Mr. Wallmeier was standing next to her on the front right side of the horse, while Mr. L. was standing on the left side of the horse.

As Dr. Kersten was taking off the front right boot, she saw two very small plastic pieces falling down into the grass. She later testified before this Panel: "*One of the plastic pieces touched my hand before hitting the ground. I then looked into the grass and picked up the two plastic pieces*".

Dr. Kersten picked up the two plastic pieces and turned to Mr. Wallmeier, who later testified before this Panel: *"I saw the two plastic pieces falling from the boot"*.

After the inspection was over, Mr. Wallmeier brought the two small plastic pieces to the FEI ground offices. They were put in a plastic tube and ultimately filed by the FEI with this Panel as evidence.

In the official report on the inspection Dr. Kersten and Mr. Wallmeier wrote as follows: "*The boots of the 42nd horse "B.", 12 years, grey gelding, rider [W.], USA, were taken off. While taking off the boot of the front right leg two small plastic pieces fell out. The original placing of these pieces in the boot could not definitely be defined*".

Dr. Kersten and Mr. Wallmeier checked also the condition of the front right leg of the horse and, in this connection, they wrote in the official report: "*No injuries could be found on this front leg, The leg could also not be defined as extremely sensitive*".

Following these events, the FEI Ground Jury held a meeting on the same day. Both Dr. Kersten and Mr. Wallmeier confirmed what they had written in their report. Another veterinarian, Dr. F.W.

Hanbücken, of the FEI Veterinary Committee, confirmed before the Ground Jury the physical condition of the horse's legs, by stating that "*no injuries could be found on the horse's legs*".

The physical situation of the horse's legs was later confirmed again by Dr. Kersten, when she testified before the FEI Judicial Committee on 20 September 1999: "*We looked after the leg and I have not found any damage or sensitiveness of the leg; there was not anything. I looked at the boots and I could not find any manipulation on the boots directly. It was not possible to see where the pieces came from, from the boot. […] I looked for damage of the skin or to see some blood, or anything, and there was nothing*".

Still in this connection, Dr. Kersten confirmed her testimony when she later stated in front of this Panel: "*I controlled the leg and did not find any marks on it nor noticed any particular skin sensitiveness*".

The Ground Jury decided on 15 June 1999 as follows:

> "*According to article 163.3 the horse is disqualified from the competition.*
>
> *According to article 163.4.2 the Ground Jury forwards this case to the Appeal Committee*".

Consequently, the FEI Appeal Committee held a meeting on 16 June 1999 and decided as follows:

> "*According to Article 164.11.5 of the FEI General Regulations (19th Edition, Revised, January 1st, 1997) it was decided to disqualify [W.], American Show Jumping Rider, from the entire event 62nd CHIO Aachen from June 16th to the 20th, 1999. In addition to this, it was decided to Report to the Secretary General of the FEI*".

On 20 September 1999, the FEI Judicial Committee held a hearing on the case and determined that W. had acted in violation of art. 143 of the FEI General Regulations ("GR"), of art. 243 of the Jumping Regulations, and of Paragraph 8 and Annex XV.1 of the Veterinary Regulations Code of Conduct. Therefore, the FEI Judicial Committee issued the following decision (the "FEI Decision"):

> "*The Committee has agreed that, in accordance with GR 174.4, 174.5.4 and 174.8, [W.] is suspended for a period of eight (8) months. This suspension began on the day of notification of the decision to [W.] (September 20, 1999) in accordance with GR 173.4 and will terminate on May 19, 2000. [W.] is also required to pay a fine of CHF 2'500.- in accordance with GR 174.2, 174.5.4 and 174.8.*
>
> *In addition, [W.] is liable to pay CHF 5'000.- towards the costs of the judicial procedure in accordance with GR 174.10. The Committee notes that the costs of the hearing, requested by [W.], were well in excess of this amount*".

The FEI notified the full decision to W. on 22 October 1999.

On 19 November 1999, the Appellant filed with the CAS his statement of appeal, accompanied by ten exhibits, and a request for an expeditious award. In particular, the Appellant filed as exhibit a videotape deposition of Mr. Richard O. Arther, an expert polygraphist who administered a polygraph examination (so-called "lie detector test") to W. and his groom Mr. L. The Appellant also filed the full transcript of such videotape deposition with the declarations made by W. and Mr. L. while under polygraph examination.

On 5 January 1999, the FEI submitted its response, with six exhibits.

On 10 January 2000, the hearing took place at the CAS headquarters in Lausanne. Both parties were present, assisted by their attorneys. The Panel heard the following three witnesses: Mr. L. (called by the Appellant), Mr. Hans Wallmeier and Dr. Franziska Kersten (called by the Respondent).

The Appellant's final submissions were as follows:

a. Neither the Appellant, nor his groom did put any plastic pieces in B.'s boots on 15 June 1999, prior to the competition. Therefore, the FEI Decision has to be reversed and the suspension, the fine, the costs imposed on W., and the publication have to be cancelled.

Alternatively:

b. If the plastic pieces found by the FEI officials were to be considered to have been in B.'s boots and W. to be considered as responsible for it, they could not have caused pain or unnecessary discomfort to the horse. For these motives the FEI Decision has to be reversed. Consequently, the suspension, the fine, the costs imposed on W., and the publication have to be cancelled.

Alternatively:

c. If the conditions of FEI GR art. 143 are to be considered as fulfilled, the duration of the suspension imposed on W. has to be considered as disproportionate and excessively severe compared to similar cases brought before the CAS. For these motives the FEI Decision has to be partially reversed and the duration of the suspension reduced to a maximum of three months.

In turn, the Respondent requested the Panel to:

a. dismiss the appeal filed by W. against the FEI Decision;

b. confirm the FEI Decision;

c. award to the Respondent a contribution towards its legal fees and other expenses incurred in connection with the proceeding;

d. authorize the publication of the arbitral award in the FEI bulletin.

LAW

1. The CAS has jurisdiction over this dispute on the basis of:

   a) Art. 059 of the FEI Statutes, reading as follows:

"*1. The Court of Arbitration for Sport (CAS), as an independent court of arbitration, shall judge all appeals reported by the Secretary General against decisions taken in the first instance by Appeal Committees and decisions of the Judicial Committee, as provided in the Statutes and General Regulations. [...]".*

b) Art. 170.1 of the GR, which reads as follows:

"1. An Appeal may be lodged by any person or body which has been subject to a penalty or decision made by any person or body authorized under the Statutes, Regulations or Rules […]:

[...]

1.2. With the CAS through the Secretary General against decisions of an Appeal Committee or the Judicial Committee".

c) The filing with the CAS by W. of a statement of appeal dated 19 November 1999, pursuant to art. R47 of the Code, according to which:

"*A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body*".

2. With regard to the law applicable to this dispute, art. R 58 of the Code provides, so far as material:

"*The Panel shall decide the dispute according to the applicable regulations and 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 body is domiciled*".

3. In the absence of a choice of law by the parties, the Panel determines that the dispute has to be decided according to:

a) the FEI Regulations, which are the sports regulations accepted by W. when he applied to compete at a FEI event;

b) Swiss law, as the FEI is domiciled in Switzerland;

c) as to procedural issues, the CAS procedural rules in the Code, supplemented by Swiss procedural law and principles, applicable to an arbitration court sitting in Switzerland.

4. W. relied much in his appeal on the declarations of innocence he and his groom had made while voluntarily submitting to a lie detector test administered by an expert polygraphist. The Appellant argued that the result of such a test is particularly valuable as evidence because, as asserted by the polygraphist, "it is estimated that the lie detector test has a maximum possible error rate of 1%".

5. The Panel notes that, even according to the Appellant, a lie detector test presents a margin of error, however small, and this impairs its reliability as a "detector of lies". In any event, apart

from the actual reliability of such a test, the Panel must ascertain on a preliminary basis whether a proof of this kind can be admitted before the CAS. The Code is silent on this question (see art. R47 *et seq.*). In this connection, the Panel notes that in a previous case the CAS did not admit the polygraph test as legitimate evidence (CAS 96/156, *F. v. FINA*, para 14.1.1).

6. Under Swiss law, the use of a lie detector test does not appear to be admissible as a legitimate proof. As remarked by several authors, Swiss case law is very much against the possible use of lie detector tests as evidence: "*La jurisprudence est plus restrictive, en revanche, pour le polygraphe ou 'détecteur de mensonge', jugé trop peu sûr*" (J. GAUTHIER, «Quelques remarques sur la liberté des preuves et ses limites en procédure pénale», Revue pénale suisse, 107/1970, 184).

7. Indeed, the Swiss Federal Court stated that "*the use of a lie detector, of narco-examination or of a truth serum as a method to establish the truth is not admissible on a constitutional basis*" (ATF 109 I a, 289, unofficially translated from German).

8. Swiss Cantonal Courts have also clearly rejected the admissibility of lie detector tests as evidence: "*The examination of the defendant under hypnosis or with the use of a lie detector is not admissible, even if it is on the defendant's demand*" (Die Praxis de Kantonsgerichtes von Graubünden, 1983, no. 28, unofficially translated from German). "*The lie detector is not admissible as a proof in criminal proceeding. The unreliability and danger of the improper use of the results are good grounds to refuse the lie detector as a valid proof*" (Schweizerische Juristen-Zeitung, 1970, 66, 114, unofficially translated from German).

9. As a result, the Panel does not deem admissible as evidence in the present arbitration a deposition based on a lie detector test.

10. Therefore, the Panel may take into consideration the declarations of W. and Mr. L. in front of a polygraph as mere personal statements rendered by a party to the dispute (W.) and by a witness (Mr. L.), with no additional evidentiary value whatsoever given by the circumstance that they were rendered during a lie detector test.

11. Pursuant to art. R57 of the Code, the Panel has "full power to review the facts and the law". Therefore, the Panel has the power, and the duty, to examine the whole case and to decide whether a penalty is appropriate and, if it is what the proper penalty is.

12. Art. 142, paragraph 1, of the GR so defines "legal responsibility" for a horse within equestrian competitions:

"T*he Person Responsible for a horse has legal responsibility for that horse under the GRs and the VRs and unless otherwise stated, is liable under the Legal System (Chapter IX)*".

13. Then, art. 142, paragraph 2, of the GR so defines, for legal purposes within equestrian competitions, the "Person Responsible":

"*For the purpose of the GRs and the VRs the Person Responsible shall normally be the competitor who rides or drives the horse during an event. If the competitor is under 18 years of age, the Person Responsible for his horse must be nominated by the NF or Chef d'Equipe […]*".

14. According to the just quoted paragraph 2 of art. 142 of the GR, a rider over 18 years of age, such as W., is irrefutably the so-called "Person Responsible" for the horses he drives. Consequently, under the above quoted paragraph 1 of the same provision, W. bears a *prima facie* legal responsibility for any mistreatment of the horse(s) he rides at FEI events. The Panel is of the opinion that this is a refutable presumption, event though art. 142, paragraph 1, does not mention any possibility for the Person Responsible to prove that, in fact, he is not responsible. The Panel notes that it is a generally accepted principle of sports law that an athlete suspended for disciplinary reasons must have the possibility to rebut charges by providing exculpatory evidence. The CAS has affirmed this principle on several occasions. For example, in the case TAS 95/141 (*C. v. FINA*), the CAS considered "*that, generally speaking, the principle of presumption of the athlete's guilt may remain but that, by way of compensation, the athlete must have the possibility of shifting the burden of proof by providing exculpatory evidence. The athlete will thus be allowed to demonstrate that he did not commit any fault intentionally or negligently*" (*Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, 221).

    Sometimes, in this connection, the CAS referred specifically to FEI regulations and penalties. In the case TAS 92/73 (*N. v. FEI*), the CAS stated: "*The GR does not mention the possibility for the person responsible to submit proof which will discharge him. However, bearing in mind the gravity of the measures which could be applied in his case, and which are akin to penal sanctions, there is no doubt that, by applying the general principles of law, the person responsible has the possibility of proving himself innocent by providing proof to the contrary*" (*Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, 157).

    In light of the above case law, the Panel remarks that, in case of an infringement of the FEI provisions concerning horse treatment, a rider has a chance to rebut such presumption of responsibility by proving that the infringement is attributable to something or someone beyond his control. However, without any such rebuttal, a rider must be held responsible for any breach of the FEI provisions concerning abuse of horses.

15. In the present case, therefore, the FEI must simply give evidence that some horse abuse occurred. Then, it is not up to the FEI to prove that W. is personally responsible of a conduct or fact in breach of the FEI provisions concerning treatment of horses. W. has the burden of proving that someone beyond his control and knowledge had violated the FEI regulations. In this respect, W. has only claimed that neither he nor his groom had placed the small plastic pieces in the horse B.'s boot, without showing any evidence that someone else beyond his control and knowledge did it.

16. With regard to attribution of legal responsibility, consequently, the Panel holds that, should an infringement of FEI regulations concerning horse treatment be found to have occurred, Mr Ward is to be considered legally responsible.

17. The FEI case rests on the circumstance that Dr. Kersten and Mr. Wallmeier, the officers checking the horse at the Aachen event, actually saw two small plastic pieces falling from one the boots of W.'s horse. The Appellant tried in several ways to cast some doubts on the credibility of the two FEI officers. However, Dr. Kersten and Mr. Wallmeier always testified in a consistent manner throughout the whole case, both before the various FEI bodies and before this Panel.

18. The Panel notes that there are no reasons to think that Dr. Kersten and Mr. Wallmeier could be biased against W. The Panel considers also that the Appellant did not provide any evidence indicating any particular prejudice against him.

19. As a result, the Panel cannot but believe that the two plastic pieces actually fell out of the boot of the right foreleg of W.'s horse. The Panel notes that it is quite unlikely that two such plastic pieces end up in a horse boot by accident. In any event, no evidence was provided that could demonstrate how the plastic pieces could accidentally end up there. This does not amount to saying that W. and/or his groom did place the two plastic pieces in the horse boot. It might well be that this was done by a third person. However, as already stated, unless the rider is able to give evidence that someone beyond his control did it, he is presumed liable for any conduct of this kind performed by a third person.

20. Therefore, the Panel finds that two small plastic pieces were in fact placed in the front right boot of W.'s horse at the Aachen event and, as a consequence, holds that the Appellant is responsible for such occurrence.

21. Art. 143, paragraph 1, of the GR defines "abuse of horses" as follows:

"*Abuse can be defined as intentionally acting in a way which may cause pain or unnecessary discomfort to a horse*".

The same provision adds an illustrative list of abuses by stating in particular:

"*As examples, an act of abuse can be any of the following:*

[...]

1.5. To 'rap' a horse anywhere in or outside the grounds of the event.

1.6. To hypersensitize any part of a horse".

22. Art. 243, Paragraph 1, of the FEI Rules for Jumping Events provides as follows:

"*All forms of cruel, inhumane or abusive treatment of horses, including, but not limited to the various forms of rapping, are strictly forbidden, in all exercise and schooling areas as well as elsewhere on the grounds of the event*".

23. Paragraph 8 of the Veterinary Regulations Code of Conduct reads as follows:

"*All riding and training methods must take account of the horse as a living entity and must not include any technique considered by the FEI to be abusive*".

24. The Panel must ascertain whether placing two small plastic pieces in a horse boot amounts to an abuse within the meaning of the above quoted provisions. In particular, art. 143, paragraph 1, of the GR, sets forth two requirements for finding an infringement: an action must be intentional ("*intentionally acting*") and must bring about, at least potentially ("*may cause*"), pain or discomfort to the horse.

25. The Appellant argued that neither he nor his groom personally intended to place anything in the horse boot and, consequently, the "intention" requirement of art. 143, paragraph 1, of the GR, was not fulfilled. However, the Panel is of the opinion that the said "intention" requirement must be read in conjunction with the above quoted art. 142, paragraph 1, of the GR concerning legal responsibility. As said, the rider is presumed responsible for any mistreatment of his/her horse, even done by someone else. Therefore, the "intention" requirement means that a rider can escape responsibility for horse abuse only if he/she proves that any pain or discomfort for the horse occurred by mere accident or by someone else's conduct beyond the rider's control.

26. In the case at hand, the Panel already remarked that the two plastic pieces could hardly end up in the horse boot by accident and that, in any event, the Appellant provided no evidence which could explain how the plastic pieces ended up there. Therefore, the Panel maintains that, whoever placed the two plastic pieces in the boot, he/she did it intentionally.

27. As to the second requirement of art. 143, paragraph 1, of the GR, Dr. Kersten – a qualified veterinarian – explained how two small plastic pieces placed in the front leg boots might certainly cause pain or, at least, unnecessary discomfort to a horse, especially when hitting a gate with the front legs. The Panel finds this explanation convincing and, therefore, maintains that the two plastic pieces were apt to cause pain or unnecessary discomfort to W.'s horse.

28. As a result, the Panel holds that the act of placing two small plastic pieces in the boot amounted to a horse abuse within the meaning of the above quoted FEI provisions, for which W. is to be held responsible. Therefore, the Panel must establish the proper penalty for such infringement of the FEI regulations.

29. The FEI regulations include detailed rules with regard to the imposition of penalties. In particular, art. 174, paragraphs 4, 5.4 and 8, of the GR reads as follows:

"*Article 174 - Guide for penalties*

[…]

4. Suspension should be imposed in cases of intentional or very negligent violation or contravention of the letter or the principle of the Statutes, Regulations or Rules, particularly in the circumstances mentioned in paragraph 2. above. In certain cases suspension may be automatic under the Statutes, Regulations or Rules. Suspension must be for a stated period and during that period the person or body suspended may take no part in competitions or events as a competitor or Official or in the organisation of, or participation in, any event under the jurisdiction of the FEI and under the jurisdiction of an NF with

its approval. In deciding when any suspension will commence, the appropriate body shall, in order to achieve a just penalty, have regard to the gravity of the offense.

[…]

5.4. Abuse to horses in any form (rapping, abnormal sensitization of limbs, banned schooling methods etc.) shall entail a fine of CHF 1'000.- to 15'000.- and/or a suspension of 3 months to life.

[…]

8. The penalty imposed in any given case can consist of a combination of fine, suspension and disqualification. The amount of a fine and the duration of a suspension shall be decided according to the guidelines mentioned in paragraph 5. above and to the circumstances of the case".

30. As mentioned, the FEI Judicial Committee suspended W. for eight months and fined him with CHF 2'500. In accordance with the above FEI provisions, the Panel must ascertain whether this is a "*just penalty*" (art. 174.4, second paragraph, of the GR), that is to say whether it is proportionate to the offense.

31. The Panel notes that it is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement. The CAS has evidenced the existence and the importance of the principle of proportionality on several occasions. In the cases TAS 91/56 (*S. v. FEI*) and TAS 92/63 (*G. v. FEI*), the CAS stated that "*the seriousness of the penalty […] depends on the degree of the fault committed by the person responsible*" (*Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, 96 and 121).

In the advisory opinion TAS 93/109 of September 1994 (*Fédération Française de Triathlon / International Triathlon Union*), the CAS, quoting the IOC Charter against Doping in Sport, stated that all sports organizations must try to impose penalties graduated in accordance with the seriousness of the offence: "*tous les organismes sportifs doivent prévoir dans leurs règlements l'imposition de sanctions pesées et réalistes. Les sanctions doivent être suffisantes pour l'infraction reconnue, selon sa gravité, […] les organisations sportives doivent toujours chercher à déterminer de quelle façon l'athlète visé a enfreint les règlements, et des sanctions modulées devraient être imposées à toutes les personnes incriminées*".

In the case TAS 95/141 (*C. v. FINA*) the CAS considered that the penalty imposed on the appellant was not proportionate to the circumstances of the case and stated that "*it is the task of the sports authorities to establish the guilt of an athlete in order to fix a just and equitable sanction*" (*Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, 220-221 and 223).

In TAS 96/157 (*FIN v. FINA*) the CAS stated that a sports judge can overrule the penalties imposed by an international federation when the penalties provided by the rules can be deemed excessive or unfair (*Digest of CAS Awards 1986-1998*, Staempfli Editions, Berne 1998, 358-359). Lastly, an explicit reference to the proportion of the penalty was also made in TAS 98/204 (*R. v. FEI*), where the CAS confirmed the importance of respecting this general principle of law.

32. In light of the above case law, the Panel deems appropriate to apply the principle of proportionality. As a result, the Panel finds the suspension of eight months decided by the FEI to be slightly excessive, in particular on the basis of the following three arguments:

    a) All the witnesses acknowledged that no visible damage, or blood, or sensitiveness could be detected on the horse's legs; it can thus be assumed that the discomfort for the horse was not extremely serious.

    b) In a previous case of horse abuse, some Argentinean horsemen who heavily abused of their horses while training for the Atlanta Olympic Games were suspended for six months by the FEI and the penalty was confirmed by the CAS (TAS 96/159 and 96/166, *A. et al.*); the Panel finds that W.'s infringement does not appear to be more serious than this other one.

    c) As was ascertained at the hearing, a suspension of eight months, ending on May 19, would actually prevent W. from trying to qualify for the Sydney Olympic Games (which will take place during the second half of September); the Panel remarks that, in this way, the suspension would have, in practice, an effect extending well beyond eight months.

33. Therefore, considering all of the above, the Panel deems that a suspension of six (6) months, which is twice the minimum required by art. 174, paragraph 5.4, can be considered as proportionate to the offense and, thus, an equitable penalty. In addition, the Panel deems appropriate to confirm the fine of CHF 2'500.-- imposed by the FEI Judicial Committee.

34. As to the request by the FEI to be authorized to publish the award in the FEI bulletin, the Panel notes that under art. R59 of the Code, last sentence, an appeal award issued by the CAS is public, unless both parties agree that it should remain confidential; therefore, the FEI need not be authorized to publish this award. In any event, the Panel does not object to any such publication.

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by W. on November 19, 1999, is partially upheld.

2. The decision of October 22, 1999, of the FEI Judicial Committee is modified as follows :

    a) The suspension of the Appellant is reduced from eight to six months, starting September 20, 1999, and ending on March 19, 2000.

    b) All additional penalties issued by the FEI Judicial Committee are confirmed.

(…)