

## **Horse Doping: Burden of Proof, Legal Interests, Human Rights Issues**

Joint Workshop on Legal Responses to Doping

University of Zurich and Kyoto University

2 & 3 March 2022

## Human Rights Issues

- Doping programs organized and sponsored by states
- Burden of proof
- presumption of innocence
- Automatic suspensions affect right to personal and economic freedom

## Burden of Proof (I)

- FEI Equine Anti-Doping and Controlled Medication Rules
- Equine Anti-Doping Rules modelled after 2021 WADA Code for human athletes
- Equine Controlled Medication Rules: consider the need administer responsible Controlled Medication Substances to horses to ensure their welfare and the highest levels of professionalism.

## Burden of Proof (II)

- Banned substances (prohibited at all times):
    - a) have no legitimate use in the competition Horse and/or
    - b) a high potential for abuse. Banned Substances are
  - Controlled Medication substances (therapeutic and/or commonly used in equine medicine substances):
    - a) the potential to affect performance, and/ or
    - b) a potential welfare risk to the Horse.
  - Specified substances:

banned substance more likely to have been ingested by horses for a purpose other than the enhancement of sport performance
- Differences between imposed sanctions!

## Burden of Proof (III)

- Equestrian Federation: standard of proof for EAD-Rule violation, greater than mere balance of probability but less than beyond reasonable doubt.
- Equestrian Federation: standard of proof for ECM-Rule violation, by balance of probability.
- Rider's standard of proof: by balance of probability,
  - a) how the substance entered into the horse, and/ or
  - b) that he bears no fault or negligence.
- No cases of no fault or negligence:
  - a) substance administered to horse by vet or support personnel; or
  - b) mislabelled or contaminated feed supplement

## Burden of Proof vs. Legal Interest

- Increasingly sensitive screening methods even detecting nanograms or femtograms (1 fg = 0,000 000 000 001 [Milligramm](#) (mg)) increase the risk of a finding resulting from a contamination
- The lower the concentration of the finding the more difficult the proof how the substance entered the horse
- Current system is suitable for sport federations to avoid doping cases, but causes «collateral damages» among riders.

# LANTER



[gattiker@lanter.biz](mailto:gattiker@lanter.biz)  
[www.lanter.biz](http://www.lanter.biz)