



DECISION of the FEI TRIBUNAL

dated 03 May 2012

In the matter of

FEDERACION DOMINICANA DE DEPORTES EQUESTRES ("FDDE")

Claimant

vs.

FEDERATION EQUESTRE INTERNATIONALE ("FEI")

Respondent

**& THE BRAZILIAN EQUESTRIAN CONFEDERATION ("BEC")
(Pursuant to a request for joinder)**

Together, "the Parties"

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen, chair
Mr. Vladan Jevtic, panel member
Mr. Armand Leone, panel member

2. SUMMARY OF THE CASE RECORD

2.1 Submissions and evidence before the FEI Tribunal

The FEI Tribunal duly took into consideration the Parties' written submissions and all the evidence adduced at the 4 April 2012 in-person hearing in New York.

2.2 Hearing: in person at the Benjamin Hotel, located at 125 East 50th Street, New York, New York.

Present: The FEI Tribunal Panel

For the FDDE:

Mr. Alexis Schoeb, Counsel to the FDDE
Mr. Jose Manuel Ramos, FDDE President
Mr. Eduardo Muniz

For the FEI:

Mrs. Lisa F. Lazarus, FEI General Counsel
Ms. Carina Mayer, FEI Dressage Department

For the BEC:

Mr. Marcelo Franklin, Counsel for the BEC
Colonel Salim Nigri, FEI Dressage Judge, witness

2.3 Applicable Rules:

Statutes 23nd edition, updates, effective 15 November 2011 ("Statutes").

General Regulations, 23rd edition, effective 1 January 2009, updates effective 1 January 2012 ("GRs"),

Internal Regulations of the FEI Tribunal, effective 1 January 2012 ("IRs")

FEI Rules for Dressage Events, updates effective 1 January 2012

FEI Olympic Athletes Ranking List Dressage – 2012 Olympic Games (Published 21 December 2010)

Codex for FEI Dressage Judges

3. PROCEDURAL BACKGROUND

- 3.1** On 25 February 2012, the FDDE filed a Protest under Article 163 of the FEI General Regulations seeking to invalidate all CDIs organised in Brazil from 1 March 2011-1 March 2012 on the grounds that they were conducted in contravention of the FEI Rules for Dressage Events and the "FEI Olympic Athletes Ranking List Dressage – 2012 Olympic Games" Rules ("Dressage Olympic Ranking Rules").
- 3.2** On 2 March 2012, the BEC filed a request to be joined in the proceedings under Article 18.12.4 of the IRs which provides the Tribunal with the authority to "allow one or more third parties to intervene or be joined in the proceedings." Given the fact that if the FDDE Protest was allowed, a Brazilian rider would be displaced from her Olympic Qualification in Dressage, the FEI Tribunal granted the BEC the right to be joined in the proceedings.
- 3.3** On 6 March 2012, the FEI answered the Protest by seeking to bifurcate the proceedings pursuant to Article 18.12.1 IRs, in order for the FEI Tribunal to decide first on the issue of the admissibility of the Protest, prior to addressing the merits of the case. The FEI contended that the Protest was inadmissible because: (i) the FDDE

did not follow the procedural pre-requisites established in the GRs for filing a Protest by failing to file it first with the Ground Jury; and (ii) that the Protest was for the most part time-barred since it had to be brought within 14 days of the Event to be valid.

- 3.4** On 19 March 2012, the FDDE responded to the FEI's Answer by denying that the case was procedurally or time-barred and contending instead that the Claimant's Protest was filed in accordance with FEI Regulations and with the only possible FEI body and that it was filed on time for all of the Events challenged. On 19 March 2012, the BEC also responded to the FEI's Answer by confirming the facts in the FEI's Answer and emphasizing the inadmissibility of the Protest for essentially the same reasons as put forth by the FEI.
- 3.5** The FEI Tribunal granted the FEI's request under Article 18.12.1 of the IRs to bifurcate the proceedings and to hear and decide the potentially dispositive procedural issues prior to a hearing on the merits. Therefore, on 21 March 2012, the FEI Tribunal heard all three (3) Parties to the Protest address the issue of admissibility by telephonic hearing.
- 3.6** On 27 March 2012, the FEI Tribunal issued its Decision on the threshold procedural issue finding the Protest timely and admissible but only with respect to the two (2) last CDIs held in Brazil from 10-12.2.2012 and from 24-26.2.2012 (the "Protested Events"). In this Decision, the FEI Tribunal ordered all Parties to provide their submissions on the merits to the Tribunal by 30 March 2012 and to be present for a hearing in New York on 4 April 2012. All Parties filed timely submissions on the merits. The FEI's submission contained Witness Statements from Mr. Trond Asmyr, FEI Dressage Director, Mr. Frank Kemperman, Chair of the FEI Dressage Committee, and Ms. Maribel Alonso, a 5* Dressage Judge. The BEC submission contained Witness Statements from Colonel Salim Nigri, Ms. Luiza Almeida Tavares, the BEC President, and the President of the Argentinean Dressage Confederation. The FDDE did not submit any Witness Statements.

4. THE HEARING

- 4.1** The hearing on the merits of the FDDE's Protest was held at the Benjamin Hotel located at 125 East 50th Street in New York on Wednesday 4 April 2012.
- 4.2** As a preliminary matter, the FEI objected to the third alleged breach in the FDDE's 30 March submission regarding late schedules and invitation violations as inadmissible in this proceeding because it had not been raised in the original Protest of 24 February 2012 or at any time prior to the 30 March submissions. The FDDE responded that the case was about two Events in Brazil and it should be given latitude to make whatever arguments it deemed

appropriate to demonstrate that those two Events were not held within the rules. The FDDE further argued that it did raise the issue during the oral hearing on 21 March 2012 relating to the procedural issues. After further debate between the Parties and after an unsuccessful attempt to resolve the problem, the FEI Tribunal ruled that the issue was raised during the oral hearing, albeit casually and without emphasis, but in a manner that was sufficient for the issue to form part of the FDDE's Protest. The Tribunal made clear to the FEI that it could ask any additional questions during the direct examination of Dressage Director Mr. Trond Asmyr in order to properly respond to this third issue since written submissions were simultaneously filed by the Parties as ordered by the Tribunal and the Respondent (in this case the FEI) did not have the opportunity for a Reply Brief.

- 4.3** The FDDE did not submit any direct evidence in the form of witness statements or witness testimony. It relied on legal argument, the documents, and the cross-examination of FEI witnesses to establish that its Protest should be granted.
- 4.4** The first issue raised by the FDDE to prove that the Protested Events "do not comply with current rules and regulations for the qualification for the 2012 Olympic Games" (see Protest) is that the minimum number of foreign judges was not obtained for the Protested Events. The FDDE acknowledged that while the Dressage Olympic Ranking Rules require all CDIs to be "judged by five judges of whom at least three are foreign", there is also an exception for "fairness" which allows the FEI Dressage Committee to accept "reasonable exceptions to these rules, in the interest of the riders and the sport in general." The FDDE argued however that a "reasonable" exception does not exist in this case because an exception must be something unusual, not normal, not common and in the "interest of the riders" and that this exception was granted liberally and only in the interest of Brazil. Further, the FDDE disputed the ability of the FEI to rely on a 2010 document entitled "Memo: Ground Juries at CDI*3 and below outside Europe for 2010" ("the Memo") to demonstrate that there was a reasonable exception to this rule in place, primarily because it was by its clear terms applicable only to the 2010 year and not to the Olympic Qualification period which ran from March 2011-March 2012.
- 4.5** On the first issue, the FEI responded that the Dressage Olympic Ranking Rules document was the seminal document in the case and that while there was a general rule requiring a minimum of 3 foreign judges at CDI*3 Events, an exception was clearly provided for "fairness" purposes. The FEI explained that at the FEI General Assembly in 2009 in Copenhagen during the PAEC meeting, the problem and expense of getting high level FEI Dressage Judges to officiate at Events outside of Europe was discussed. It was at that time that the proposal to require only two foreign judges for Dressage Events outside of Europe was made and that proposal

resulted in the Decision made by the Dressage Committee as recognized in the 18 January 2010 meeting minutes to allow a general exception. The FEI pointed out that in January 2010, when the Dressage Committee discussed the exception, there had already been “positive feedback received from Australia, Canada, and New Zealand.” Trond Asmyr’s witness statement explained that the exception was granted 22 times since its inception in 2010 and 14 times during the Olympic qualification period. It was not only Brazil who took advantage of it, but Australia, Canada, the USA, and New Zealand also received exceptions to have only two foreign judges during this period. Once the FEI Dressage Committee delegated the authority to the FEI Dressage Department to grant the exception when three local judges were listed in the Draft Schedule, the FEI Dressage Director granted it whenever it was requested outside Europe for a CDI*3 or below. There was no occasion on which the exception was requested but not granted. The BEC supported the FEI’s argument in this respect.

- 4.6** The second issue raised by the FDDE is that Col. Salim Nigri, a Dressage 4* Judge from Brazil, should not have been appointed as an Official at the Protested Events because his officiating violated the CODEX for FEI Dressage Judges (a code of conduct.) Specifically, the allegation is that Col. Nigri should not judge at Brazilian Events involving Brazilian riders because he is the Dressage Director for the BEC and he was the Chef D’Equipe for the Brazilian team at the Pan American Games in 2011. The FDDE noted that they have “respect” for Col. Nigri and were not alleging that he engaged specifically in nationalistic judging, but instead that his presence on the Ground Jury, given his conflicts, should invalidate the results from the Event for Olympic ranking purposes.
- 4.7** The FEI responded that Col. Nigri confirmed in his witness statement, that he was not the Chef D’Equipe for the Brazilian team during the February Events and that there was no other condition in the CODEX which he violated. Col. Nigri also confirmed that he did not engage in nationalistic judging and demonstrated that the scoring he gave for the Brazilian riders was in line with, or even lower, than the scores provided by the foreign judges. The lack of nationalistic judging was also confirmed in the witness statements of Ms. Maribel Alonso and Mr. Trond Asmyr. The FEI emphasized that even if Col. Nigri’s scores were removed from the judging of the Protested Events, it would not change the penultimate issue in the case as the Brazilian rider would still qualify ahead of the FDDE rider. Finally, the FEI argued that the CODEX prescribes the specific remedies available for a breach of the CODEX and those remedies do not include annulling results. Therefore, even if the FDDE could establish a breach of the CODEX, such breach would not empower the Tribunal to nullify the results of the Protested Events. The BEC confirmed the FEI’s argument and reiterated that Col. Nigri’s judging at the Protested Events did not violate any of the terms of the CODEX.

4.8 The third and final issue raised by the FDDE is that the Draft Schedules for the Protested Events were sent too late and did not invite other National Federation athletes to attend and therefore the Events should not have been approved by the FEI. Specifically, the FDDE claims that the rules provide that at least five (5) other National Federations must be invited to attend and that the Draft Schedules must be sent to the FEI at least sixteen (16) weeks prior to the Event. The FDDE also claimed that the FEI rejected a late schedule from Aachen, Germany but accepted late schedules from Brazil, which suggested that the FEI did not have a fair and consistent approach to approving Events.

4.9 The FEI responded that schedules were for practical reasons frequently late but that the more important consideration was whether the Events were listed in the calendar with enough time for the Federations to prepare and their Athletes to attend. That the Protested Events were listed in the calendar with sufficient time and that there was no evidence of any riders who complained that there was not enough time or who were denied entry to the Event. The BEC explained that any riders would have been welcome to attend the Events in Brazil, including the FDDE rider. The BEC also confirmed that the Draft Schedule with the judges' names and nationalities have always been published in advance on the BEC's website allowing everyone's previous acknowledgment, including FDDE. This was confirmed in Ms. Maribel Alonso's witness statement. The FEI also adduced testimony from Mr. Trond Asmyr, FEI Dressage Director, who clarified that the notation in the Draft Schedule that the Protested Events were open to all National Federations satisfied the requirement that at least six National Federations be invited to attend the Event. With respect to the alleged different treatment between the Aachen and Brazilian Events, Mr. Trond Asmyr testified that he did reject two proposed Brazilian Events in late 2011 and early 2012 because they were not in the calendar early enough for non-Brazilian Athletes to have the opportunity to attend. He also explained that the Aachen Event was rejected because it conflicted with other Events already in the calendar for the same time period in the same region.

4.10 Finally, the FDDE emphasized that even if one of these three violations was not sufficient in and of itself to annul the results from the Protested Events, the violations, when taken together, in view of the totality of the circumstances, mandate that result.

5. LEGAL ANALYSIS

5.1 As an initial matter, and in order to set out the framework for this Decision, the FEI Tribunal finds that for the Protest to be sustained and the relief requested by the FDDE granted, the FDDE must: (1) prove at least one of the rule violations it has alleged by a balance of probabilities; and (2) demonstrate that the appropriate remedy for such rule violation(s) is the annulment of the results earned at the

Protested Events. The Tribunal therefore rejects the FDDE's contention that it can somehow uphold the Protest because the totality of the circumstances suggest that the Protested Events were not fairly held.

- 5.2.** The Tribunal finds that the FDDE has not sustained its burden of proving that the FEI breached its own regulations by approving schedules with only two foreign judges. There was no dispute that the Dressage Olympic Ranking Rules allow for exceptions to the rules for "fairness" in the interest of riders. The record evidence shows that an exception to the rule requiring a minimum of 3 foreign judges for 3* Events and above was requested by Maribel Alonso, a 5* Judge living in Mexico, because of the challenges in South and Latin America to get high level judges to travel and officiate outside Europe. The exception was ultimately granted by the FEI Dressage Committee. The Witness Statement of Frank Kemperman, Chair of the FEI Dressage Committee, was not challenged by the FDDE and Mr. Kemperman stated that the exception was granted outside of Europe by the Dressage Committee and that the authority was delegated to the FEI Dressage Department to issue the exceptions upon request. This was confirmed by Trond Asmyr's witness statement and the January 2010 meeting minutes of the Dressage Committee. Brazil was not the only country to take advantage of the exception, but it was also granted to Australia, Canada, the United States, and New Zealand. Therefore, the FDDE's claim that this was an exception not for the interest of all riders but only for the interest of Brazil is not supported by the evidence. The first National Federations to take advantage of the exception were Australia, the United States, and New Zealand – not Brazil.
- 5.3** The FDDE has emphasized that even if the FEI Tribunal accepts that there was an exception that was properly decided for fairness reasons, that it cannot be considered valid after 2010 during the Olympic Qualification period because the Memo indicated that the exception was for 2010 only. The FEI Tribunal has analysed this question and concludes that, while the document was not formally extended to 2011 and 2012, this Tribunal must accept its applicability to 2011 and 2012 for the following reasons. First, while the Memo states that it was initiated in 2010, it does not state that it will expire in 2010. Second, the Memo was never removed from the FEI website and has continued to be applied to the present date. Mr. Frank Kemperman, Chair of the Dressage Committee, confirms in his witness statement that the Decision was made to continue the exception. Third, Maribel Alonso states that Draft Schedules for FEI Events are announced on National Federation as well as FEI websites and those in the equestrian community affected by the Memo were aware of the practice of requiring only two foreign judges in CDI*3s and below outside of Europe. This is confirmed by the witness statement of the President of the Argentinean Dressage Confederation. By the time the FDDE filed its Protest, the Memo was being applied for more

than one year after the date on which the FDDE claims it should have expired. Further, the Tribunal notes that the FEI Statutes state that one of the FEI's key objectives is to "promote equestrianism in all its forms and to encourage the development of the FEI Equestrian Disciplines throughout the world." The Tribunal finds that this exception to allow a minimum of two foreign judges for countries outside Europe furthers this objective to help promote equestrianism outside Europe, because the majority of International Events still take place in Europe and there is a need to increase participation in the sport in other regions of the world. Therefore, the FEI Tribunal believes that the limitation of this exception to Events outside Europe allows it to be consistent with the goal of developing equestrian sport globally and also Olympic ideals relating to universality in the sport. The FEI Tribunal is on the other hand aware that any reduction in the number of foreign judges drives an Event nearer to a more national event. The FEI Tribunal is of the opinion that the Decision of the FEI to promote equestrian sport globally has to be accepted. Since the FEI Tribunal finds that the Dressage Olympic Ranking Rules were not violated, it need not consider the question of what the appropriate penalty or remedy should be.

5.4 The Tribunal next turns to the question of Col. Salim Nigri and whether his judging at the Protested Events violates the CODEX for FEI Dressage Judges. Since the FDDE has not alleged any specific bias on Col. Nigri's part and has made efforts to assure this FEI Tribunal that the FDDE respect him, the Tribunal accepts that Col. Nigri did not violate the part of the CODEX which provides that "A judge must have a neutral and independent and fair position towards riders, owners, trainers, organizers and other officials." Therefore, in the Tribunal's view, the critical question is whether Col. Nigri engaged in activities which under the CODEX "will or may lead to a 'conflict of interest' when officiating at a CDI." The FDDE has claimed specifically that Col. Nigri's position as Chef D'Equipe for the Pan American Games and his current role as BEC Dressage Director violate the CODEX. During the hearing, the Parties debated the question of timing with respect to how long, for example, Col. Nigri's role as Chef d'Equipe would prevent him from acting as an FEI Official at Events where Brazilian riders were participating. It is undisputed that Col. Nigri's role as Chef d'Equipe ended once the Pan American games in October 2011 were over. Therefore, the question for the Tribunal is whether he is conflicted under the CODEX from officiating at FEI Events where Brazilians are competing in February 2012. The Tribunal holds that the phrase "when officiating at a CDI" could only have been intended by the drafters of the CODEX to specify a timeframe during which the activities listed would present a conflict. This interpretation is consistent with the rest of the CODEX since where a specific timeframe was intended, it is written clearly into the CODEX. For example it is a conflict to "train or ride a horse for more than three days in the twelve month period prior to an event." Given that, the only conclusion that the Tribunal can draw from a review of the

CODEX is that it is a conflict for a judge to officiate at the same FEI Event in which he is also acting as a Chef d'Equipe. Since that is not the case here and there were several months between Col. Nigri's role as Chef d'Equipe and his judging at the Protested Events, this Tribunal cannot consider his judging at the Protested Events to be a conflict *per se*. The Tribunal must reach the same conclusion with respect to Col. Nigri's role as Dressage Director for the BEC since the role is non-renumerated, is not involved with selection of any teams or riders, and sincethere are several examples within equestrian sport where FEI judges also work for the National Federation. Col. Nigri's and Mr Asmyr's testimony on those points is uncontested. Therefore, the Tribunal finds that the CODEX has not been objectively violated in this case.

5.5 Further, the Tribunal also considers Article 158 of the FEI General Regulations ("Conflict of Interest") to be relevant to this analysis. Article 158 explains that:

"Conflicts must be avoided whenever practicable. However, conflicts may be linked to experience and expertise that is necessary to qualify Officials. The specific balance between conflict and expertise shall be regulated by the relevant Sport Rules."

This provision clarifies for the Tribunal that conflicts must be analysed as a balancing test, particularly where you have a region of the world with a lack of highly qualified FEI judges. Therefore, even if the conflict question is analysed subjectively, this Tribunal does not believe that a conflict can be established given all of the prevailing circumstances.

5.6 However, even if the FDDE were able to establish a breach of the CODEX, the possible remedies that could result from that violation are set forth in the CODEX. The CODEX states specifically that:

"the FEI and the FEI Dressage Committee have the right to undertake disciplinary actions against judges who do not follow the CODES and FEI rules. Such disciplinary actions consist of: 1) Warning letter 2) Temporary suspension and 3) Removal from the FEI Dressage Judges' list."

Therefore, even if a breach was established, this Tribunal would not be empowered to order an annulment of the Event or of the Olympic results arising from the Event as a consequence of the violation, which is the relief sought by the FDDE. Further, even a partial remedy such as removing Col. Nigri's scoring from the Protested Events would not yield the consequences requested by the FDDE because the record evidence demonstrates that if Col. Nigri's scores were removed, the Brazilian rider would still qualify ahead of the FDDE rider for the Olympic Games.

5.7 The final issue to be considered by this Tribunal is whether the late submission of schedules is a rule violation and, if so, whether such violation would result in the annulment of the results from the Event. It is undisputed that the Draft Schedules for the Protested Events were not submitted at least sixteen (16) weeks prior to the Event as required by Article 110(1). However, the Tribunal considers the fact that the dates of the Protested Events were entered into the FEI calendar to be more important since Athletes and Federations can access the Calendar from the internet at any time. As the Protested Events were on the FEI Calendar for a considerable period before the Draft Schedules were approved, the Tribunal is convinced that there was no unfairness to other riders. This is especially true as there is no evidence that there were any Athletes who wanted to attend the Events in Brazil but were prevented from doing so either because their entries were rejected or they could not arrange to attend on the short timeframe. While FDDE counsel argued that he did not "see how it is possible for people coming from abroad to be able to participate in the events", the FDDE did not present any evidence on this point or on the question of whether or not FEI Dressage riders typically rely on the FEI Calendar or Draft Schedules for choosing which Events they will enter.

5.8 This Tribunal recently considered the implication of late schedules on results in its 15 February 2012 Decision in AZE-NF v. FEI. In that case, the Tribunal learned that timely submission of schedules is unfortunately rare and that most schedules are submitted late but nonetheless approved by the FEI. In the AZE case, the Tribunal ruled that once the FEI has approved a schedule before Definite Entries are due (i.e. 4 days prior to an Event), that Event cannot be annulled and its results must be counted. Therefore, the Tribunal feels bound to apply the same analysis here and declines to annul results of an Event solely because the Draft Schedule was not timely submitted.

5.9 Further, the fact that Trond Asmyr testified that all of the results earned by the FDDE Athlete which counted towards her Olympic qualification were similarly earned at Events where the schedules were submitted late, eliminates any potential unfairness issues in the Tribunal's opinion.

5.10 The FDDE also raised a sub-issue relating to the schedules, alleging that the invitation rules were violated because the BEC had an obligation to invite at least 5 other countries' Athletes to participate at the Protested Events and they failed to do so. The Draft Schedules, which are in the record, indicate that the Event was open to all National Federations. Trond Asmyr testified that it was sufficient to issue an invitation to all National Federations and that the practice was to accept this open invitation as satisfying the minimum invitation requirements. The FDDE did not present any evidence to dispute Mr. Asmyr's representation and so it is therefore accepted and the Tribunal cannot annul the Event results on that

basis.

5.11 Finally, the Tribunal considers that it is important for it to address the FDDE's repeated contention that the Brazilian rider had a significant advantage over the FDDE rider because she was competing before at least 3 judges of Brazilian nationality and only against other Brazilians. The Tribunal finds reassuring the evidence presented by the FEI that Dressage Athletes are not graded against the other competitors but instead on how well they perform the standard test against certain objective criteria. Significantly, placings (i.e. whether the rider came in first, second, or third) do not count for Olympic rankings and qualification. Therefore, even if this Tribunal accepted the FDDE's representation that the Protested Events were "organized by Brazilians for Brazilians and with a majority of Brazilian judges", that does not have the same implication compared to other FEI Disciplines such as Jumping where placings do count. This element, which is quite unique to Dressage, was an important consideration underlying this Decision. Since there was no evidence presented that the Brazilian rider's scores were markedly different in Brazil compared to other Events at which she had competed outside of Brazil, the Tribunal credits the FEI's contention that there is no specific competitive advantage to participating at Events with fewer participants in a rider's home country because that rider's Dressage test scores should be the same independent of whether that rider competes at an Event with a small field of competitors in that rider's home country or at an Event with a large field of competitors of different nationalities outside that rider's home country..

5.12 The Tribunal takes note of the FEI's argument, joined by the BEC, that the FDDE's failure to file a Protest until the very end of the Olympic Qualification period was prejudicial to the BEC and the affected Brazilian Athlete, because the delay prevented the BEC and the affected Brazilian Athlete from taking corrective measures. The Tribunal declines to address this issue given its Decision that the FDDE has not sustained its burden of proving any violation that could lead to the annulment of results from the Protested Events. However, the Tribunal takes note of those claims, specifically the ones set forth in the Witness Statements of Ms. Luiza Alemeida Tavares and the BEC President.

6. DECISION

For the above reasons, the FEI Tribunal therefore decides as follows:

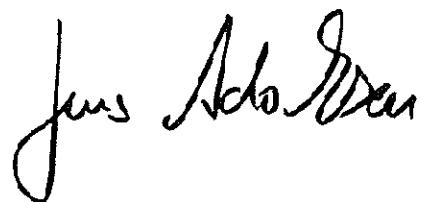
6.1 The Protest of the FDDE is denied and the status quo is therefore preserved with respect to the Protested Events.

6.2 The Parties are to bear their own costs and expenses.

7. DECISION TO BE FORWARDED TO:

- 7.1 The Parties to the proceedings: Yes**
- 7.2 Any other: IOC Legal Department**

FOR THE FEI TRIBUNAL

A handwritten signature in black ink, appearing to read "Jens Adolphsen".

Prof. Dr. Jens Adolphsen
Panel Chair