



Arbitration CAS 2012/A/2831 Japan Paralympic Committee (JPC) v. International Paralympic Committee (IPC) & International Blind Sport Federation (IBSA), award of 20 August 2012

Panel: The Hon. Michael Beloff QC (United Kingdom), Sole Arbitrator

Paralympics football 5-a-side

Reallocation of an unused slot

Systems of selection criteria

Validity of the IBSA's decision to refuse to revise its reallocations decision for the London 2012 Paralympics Games

- 1. There is no uniform law which applies to selections for participation in sporting competitions in general or in the Olympics/Paralympics Games. Some are based on objective criteria, some on subjective criteria, some on a mixture of both criteria. The advantage of wholly objective system i.e one which depends upon ascertainable results or rankings is that it obviates controversy which attends upon the exercise of subjective judgment. The advantage of a subjective system i.e. one which does depend upon the judgment of the selectors is that it obviates the possibility that, notably in individual events, the best candidate may, through injury or illness or accident, may be unable to compete, or even if able to compete, be eliminated in sudden death trials. CAS has developed certain principles to govern selection disputes principally that: (i) selection criteria should be as objective as possible; and (ii) where selection criteria are objective they must be adhered to.**
- 2. In case the international federation had a discretion and there was nothing irregular about the procedure by which its decision was taken, it must be considered that such decision was fair and reasonable. It matters not that a different decision might have been taken, as persons can reasonably differ in their reactions to the same situation.**

This is an appeal by the Japan Paralympic Committee (JPC) against the refusal of the International Blind Sport Federation (IBSA) to revise its reallocation of an unused team Qualification Spot for London 2012 Paralympic Games (*"the Games"*) to Turkey (*"the first decision"*) and the refusal of the International Paralympic Committee (IPC) to countermand the first decision (*"the second decision"*).

JPC is the Paralympic NOC for Japan.

IPC is the global governing body for the Paralympic movement and the owner of all rights in and to the Paralympic Games (Summer and Winter). IBSA is the global governing body for Blind Athletes

and Blind Sports. It is also the International Sports Federation (IF) for three sports for athletes with visual impairment, including football five-a-side (*“Football 5”*).

The Qualification Criteria of Football 5-a-side for London 2012 Paralympic Games (*“the Criteria”*) are set out in a document published by IPC, which sets out the qualification system principles. Apart from qualifications deriving from (i) the 2010 IBSA Football 5-a-side world championships allocation [the top ranked NPC qualifies]; (ii) host country allocation, the slots are allocated on a regional basis (i.e. Asian, European, American, African) by reference to results in the 2010/2011 IBSA Football 5-a-side regional championships.

The Criteria specify, *inter alia*,

“(If no African NPC has qualified through the 2010 IBSA Football 5-a-side World Championships, the top ranked NPC at the 2011 IBSA African Championships qualifies”.

However, the 2011 IBSA African Championships were not held.

Accordingly IBSA had an unused slot which it could reallocate.

Apart from NPCs which have already slots for the Games, Japan, Turkey and Colombia were the best ranked NPCs from respectively the Asian, European and American region ; Turkey was also ranked 8th , Colombia 9th and Japan 10th in the world.

IBSA decided to reallocate the slot for the Games to Turkey and so informed Turkey by an undated letter over the signature of Mr Campos, the Chairman of IBSA’s Football 5 Subcommittee.

By email dated 11th May sent to IBSA and JPC, Japan Blind Football Association (JBFA) wrote, *inter alia*:

“As Japanese legal counsel to Japan Blind Soccer Association (the “Association”), we would like to express our position regarding reallocation of the African Region’s slot. According to Japan Paralympic Committee (the “JPC”), the slot was reallocated to Turkey based on IBSA’s decision that the slot is to be reallocated to the best ranked country among the regional championships with the highest number of participating countries.

We believe, however, such way of reallocation does not conform to the IPC regulation of qualification for London 2012 Paralympic Games (the “IPC Regulation”), and the athletes of Japanese team are not satisfied with the result.

In order to achieve fairness and equality, let us propose that IBSA would take either step to have play-off games or to draw lots for a slot among three countries having the right to be reallocated the African Region’s slot, namely Japan, Turkey and Columbia.

By email dated 11th May 2012 sent to JPC, IBSA over the signature of Mr Campos wrote:

“We have had many problems with African teams to organise an event in terms of timelines. LOCOG needed the final decision by 12th March (eight participating teams) in agreement with the IPC, so we did not have time to arrange an alternative qualifying method (“the first explanation”).

By email dated 14th May 2012 sent to IBSA and IPC, JPC wrote, *inter alia*:

“Though we appreciate your more precise information, we would insist on IBSA’s having play-off games or drawing lots for a slot among the three countries.

As we believe that the way of allocating slot which was taken by IBSA is against IPC Regulation and the decision is invalid. So if IBSA would not consult LOCOG or IPC about rerunning of the allocation, we will have to think about filing this case with the Court of Arbitration for Sport as well as informing Columbia’s Association of the contents of these letters exchanged”.

By a further email dated 22nd May 2012 sent to IBSA and IPC, JPC wrote, *inter alia*:

“We are await for your reply to our email dated 14th May, 2012.

How is the reconsideration in IBSA regarding the reallocation of the slot coming on?

If IBSA will not give us prompt reply, we will ask for cooperation of Columbia’s association and announce this case regarding the reallocation of the slot to the public through media. In addition, in case IBSA will not give us the satisfactory answer about the reallocation until the end of May, we will have to seriously consider filing this case with the Court of Arbitration for Sport”.

By a further email dated 8th June 2012 sent to IPC and IBSA JPC wrote, *inter alia*:

“As Japanese legal counsel to Japan Paralympic Committee (“JPC”) and Japan Blind Football Association (“JBFA”), let us take this opportunity to inform you of our present position regarding the reallocation of the African Region’s slot in the qualification of Football 5-a-side for London 2012 Paralympic Games as well as of our future action.

The Qualification criteria (“the criteria”) of Football 5-a-side for London 2012 Paralympic games specifies “the top ranked NPC at the IBSA African Championships qualifies for 2010 IBSA Football 5-a-side World Championships, namely there are a slot for African NPCs. Actually the African Championships was not held and IBSA decided to reallocate the slot to Turkey based on the ground that Turkey is the best ranked country among the regional championships with the highest number of participating countries without considering other Continents’ teams.

As we asserted in our previous email letter to IBSA, the IBSA Futsal Subcommittee arbitrarily reallocated the African Region’s slot to Turkey and such way of the reallocation is not in accordance with the Qualification Criteria for London 2012 Paralympic Games (the “Criteria”) and is invalid and unfair.

Through several emails attached to this email, we have protested to Mr. Carlos Campos, the Chairman of the IBSA Futsal Subcommittee, this situation and requested to IBSA that IBSA promptly consulted IPC about the rerun of the reallocation and IBSA should have play-off games or draw lots for a slot among three best ranked countries in each Continents’ Championships equally having the right to be reallocated the slot, namely Japan, Turkey and Colombia in order to achieve fairness and equality in the qualification.

However, we have not received official response from Mr Campos and IBSA have not decided nor announced officially the reallocation to Turkey on the IBSA website etc. up to date.

Have you ever known the situation regarding the real allocation of the African Region’s slot and have IBSA officially announced the reallocation to Turkey? We are now preparing a request for Arbitration and we will have to submit the dispute to CAS against IBSA in due course, if IBSA will not give us the satisfactory answer”.

In an email dated 13th June 2012 to JPC2 IBSA wrote, over the signature of Mr Barredo its President, *inter alia*:

“The circumstances by which a quota slot became available are not covered by the relevant Qualification Criteria – that is no doubt a fault of the Criteria, and we must ensure that for future Paralympic Games there are appropriate provisions guiding the re-allocation of Quota places in such a situation. However, IBSA was faced with a state of affairs in which it had to take a decision based on the best rationale available, exercising our discretion fairly and in the interests of the sport of Football-5. Following detailed discussions amongst the IBSA Football Committee, it was decided that the remaining place should go to Turkey as the next best ranking nation from Europe. Europe is currently considered the strongest Region in terms of the number of Nations regularly competing in the sport of football. In this way, it can fairly be said that Turkey deserves the slot based on a reasonable perception of which Nation would provide the strongest competition to the nations already qualified.

As you will appreciate, IBSA could have reached a range of decisions as a result of exercising its discretion. Although we had considered the potential of a ‘play-off’, we did not consider the option of drawing lots, but this is a possible valid outcome from an exercise of discretion.

While we would accept that the decision is ‘arbitrary’ in some sense, we do not accept that it is either impulsive or unfair.

IBSA was faced with a situation not covered in the applicable rules; this gave rise to a discretionary decision which is, we feel, an appropriate outcome given all of the relevant factors” (“the second explanation”).

This last email coincided with a letter of equivalent protest from the Colombian PC of the same date which proposed Colombia as the venue for any play-off.

JPC have also, through medium of the same correspondence, impliedly requested IPC, in its capacity as “owner” of the Paralympic Games, to correct the reallocation made by IBSA, and rerun the process.

Proceedings before the Court of Arbitration for Sport (CAS)

On 21st June 2012 the JPC filed its Statement of Appeal with exhibits and proposed Michael J. Beloff QC as arbitrator.

On 27th June 2012 the JPC agreed to submit the claim to a sole arbitrator and to an expedited procedure.

On 2nd July 2012 IPC approved an expedited procedure with Michael Beloff QC as sole arbitrator to determine the appeal without an oral hearing.

On 4th July 2012 IBSA approved such an abbreviated procedure under the auspices of Michael J. Beloff QC as single arbitrator.

On 12th July 2012 the JPC confirmed that its Statement of Appeal should be treated as its Appeal Brief and filed additional exhibits.

On 17th July 2012 the parties were informed of the appointment of The Hon. Michael J. Beloff QC as Sole Arbitrator by the CAS Secretary-General.

On 26th July 2012 IPC submitted its answer without any exhibits relying upon exhibits submitted by IBSA.

On 26th July 2012 IBSA submitted its answer with exhibits over the signature of Mr O'Donovan its Executive Director ("the third explanation").

The Sole Arbitrator's determination is made without an oral hearing (as also agreed) and by reference to written submissions and exhibits.

JPC Submission and Request for Relief

JPC puts in issue whether the IBSA Futsal Subcommittee was indeed the body that formally decided to reallocate the slot to Turkey.

In any event, JPC disputes the conformity of the first decision with the Criteria on the basis that:

- (i) there is no provision in the Criteria which gives IBSA the right to reallocate unused slots at their discretion, and
- (ii) even if IBSA had the discretion to decide the reallocation, it exceeded or abused its discretion by failing to considering the possibility of allocating the vacant slot to other regions' NPCs.

In particular, the first decision violated Article 3.5.4 of the IPC Handbook Paralympic Games Chapter ("*the Handbook*"), under which IBSA had the responsibility to "*contribute, with IPC, to the development of a consistent and reliable qualification system and allocate athletes' slots to the Paralympic Games using a consistent, transparent and reliable process*".

Moreover IPC had the responsibility to correct any abuse of power by IBSA and, in so far as IPC approved the first decision, IPC exceeded or abused its own discretion.

JPC therefore request CAS to order IPC or IBSA to rerun the reallocation of the African Region's slot by way of having play-off games for the slot among Japan, Colombia and Turkey in the qualification of Football 5-a-side for London 2012 Paralympics Games in due time.

IPC's Submission

The IBSA is the IF for Football-5 and has exclusive jurisdiction and responsibility for setting qualification criteria for entry to the Paralympic Games for teams wishing to participate in the Football-5 tournament held as part of the Games.

As the owners of the Paralympic Games the IPC will agree with all the IFs which control sports on the Paralympic Games programme, the overall athlete quota for their sports and the scheme for allocating qualification slots from the Games amongst nations wishing to compete.

The slots for the 2012 Football-5 are designed to create a competition of 8 teams considered by IBSA and the IPC to be the ideal number of teams for this competition in which every team gets to play at least one competitive match and there are no byes.

IBSA accordingly decided to honour its commitment to the IPC and nominate 8 teams.

Having taken the decision to nominate 8 teams, of which no complaint or criticism is made by JPC, IBSA "*ventured out into uncharted waters*". Since the Criteria did not contemplate that no African nation would qualify, there was no provision there under to guide IBSA's decision as to which nation should receive the benefit of the 8th slot;

While IBSA could have organised a play-off tournament between Japan, Turkey or Columbia or could have drawn lots, IBSA decided to award the place to the next-best ranked nation, both in world terms and in terms of the European region was the strongest Region in terms of performance in 2011 of its member countries.

The decision taken was reasonable in all the circumstances and represents a proper fair and not arbitrary or capricious exercise of the discretion reposed in IBSA and was taken in the interests of football-5.

There was accordingly no basis for JPC's claim for relief.

IBSA submission

IBSA's submission complements IPC's in main material respect i.e. as to the fairness and rationality of the first decision and the Sole Arbitrator shall only note the following key points additionally made or emphasised.

- (i) Having decided to maintain the format of an 8 team competition, IBSA was compelled to select an appropriate replacement to fill the slot left vacant by Africa.
- (ii) A number of options were considered including a play-off competition IBSA or drawing lots: but the decision was made to award the place to the next-best-ranked nation in the world.
- (iii) Turkey deserves the slot based on a reasonable expectation of which nation would provide the strongest competition to nations already qualified.

LAW

Jurisdiction of the CAS

1. In article 2.8 of the Handbook, IPC specifies “*Any other disputes arising on the occasion of, or in connection with, the Paralympic Games shall be submitted exclusively to the Court of Arbitration for Sport*” except for disputes related to sports technical rules.
2. Accordingly CAS has jurisdiction as confirmed by the correspondence set out above.

Admissibility

3. R49 of the Code of Sports-related Arbitration (“*CAS Code*”) provides that the time limit for appeals shall be 21 days from receipt of the decision appealed against.
4. If the decision appealed against was in this instance the refusal on 13th June 2012 to re-open the allocation of the slot to Turkey rather than the initial allocation decision, it follows that the above rule was complied with. No point has been taken by either IPC or IBSA that it was the allocation decision of 13th March 2012 itself against which the appeal should have been timeously brought a (see generally CAS 2010/A/2315 paras 7.6-7.11) and the Sole Arbitrator is therefore prepared to proceed on the basis that the appeal is admissible.

Applicable law

A. The criteria

The Criteria stated, so far as material, as follows:

QUALIFICATION SYSTEM PRINCIPLES		
METHOD	QUALIFICATION	TOTAL
2010 IBSA	The top ranked NPC qualifies	1 team
FOOTBALL 5-A-SIDEWORLD CHAMPIONSHIPS ALLOCATION		

QUALIFICATION SYSTEM PRINCIPLES		
METHOD	QUALIFICATION	TOTAL
2010/2011 IBSA FOOTBALL 5-A-SIDEWORLD	Asian Region	6 Teams
	The top ranked NPC at the Guangzhou 2010 Asian para Games qualifies. If the top ranked	

<p>CHAMPIONSHIPS ALLOCATION</p>	<p>NPC has already qualified through the 2010 IBSA Football 5-a-side World Championships Allocation, the 2nd ranked NPC at the Guangzhou 2010 Asian Para Games qualifies.</p> <p>In the case that only one team from Asia has qualified through the method described above: the top ranked NPC at the 2011 IBSA Football 5-a-side Asian Championships.</p> <p>European Region</p> <p>The top and 2nd ranked NPCs at the 2011 IBSA Football 5-a-side European Championships qualify. If the host country is one of those two top ranked NPCs, the 3rd ranked NPC qualifies. If one of the two top ranked NPCs have already qualified through the 2010 IBSA Football 5-a-side World Championships, the next ranked NPC at the 2011 IBSA Football 5-a-side European Championships qualifies.</p> <p>Americas Region</p> <p>The top and 2nd ranked NPCs at the Guadalajara 2011 Parapan American Games qualify. If one of the two top ranked NPCs, or another NPC from the region, has already qualified through the 2010 IBSA Football 5-a-side World Championships Allocation, only the top ranked NPC which has not qualified previously shall qualify.</p>	
	<p>African Region</p> <p>If no African NPC has qualified through the 2010 IBSA Football 5-a-side World Championships, the top ranked NPC at the 2011 IBSA African Championships qualifies 2010 IBSA Football 5-a-side World Championships.</p>	
<p>HOST COUNTRY ALLOCATION</p>	<p>The host country directly qualifies one (1) men's team subject to participation in either the 2010 IBSA Football 5-a-side World</p>	<p>1 team</p>

	Championships or the 2011 IBSA Football 5-a-side Regional Qualifier! If the host country qualifies through the 2010 IBSA World Championships Allocation, the 2nd ranked NPC at the 2010 IBSA World Championships qualifies.	
TOTAL	Male	8 teams

B. *Qualifying timeline*

- 9 April 2012 IBSA confirms in writing the reallocation of unused team qualification slots.
- 20 April 2012 Deadline for London 2010 Organizing Committee to receive accreditation application forms submitted by NPCs.
- 6 August 2012 Deadline for London 2012 Organizing Committee to receive sport entry forms submitted by NPCs.

C. *Dates/process of confirmation of qualification slots*

By 26 March 2012, each NPC must confirm to IBSA in writing (fax and emails are accepted) the number of team qualification slots they will use. NPCs that have not replied by this date will have lost their team qualification slots, and IBSA may reallocate these slots.

By 09 April 2012, IBSA will confirm in writing the reallocation of all unused team qualification slots.

By 09 April 2012, it is officially declared that the respective NPCs will use the allocated quota granted for the London 2012 Paralympic Games. Any NPC that does not use its team qualification slot allocated may be subjected to sanctions by the IPC and IBSA.

D. *Reallocation of unused qualification slots*

Slots allocated at the 2010 IBSA Football 5-a-Side World Championships

Any team qualification slots earned at the 2010 IBSA Football 5-a-Side World Championships and not used by the respective NPC will be reallocated to the NPC of the next highest ranked team from this competition, not otherwise qualified.

Slots allocated to Host Country

Any team qualification slots allocated to the host country and not used by the respective NPC will be reallocated to the highest ranked team from the 2010 IBSA Football 5-a-Side World Championships, not otherwise qualified.

Slots allocated at the 2011 IBSA Football 5-a-Side Regional Championships

Any team qualification slots earned at 2011 IBSA Football 5-a-Side Regional Championships and not used by the respective NPC will be reallocated to the NPC of the next highest ranked team from this competition, not otherwise qualified.

METHOD	QUALIFICATION	TOTAL
	African Region If no African NPC has qualified through the 2010 IBSA Football 5-a-Side World Championships, the top ranked NPC at the 2011 IBSA African Championships qualifies 2010 IBSA Football 5-a-Side World Championships.	
HOST COUNTRY ALLOCATION	The host country directly qualifies one (1) men's team subject to participation in either the 2010 IBSA Football 5-a-Side World Championships or the 2011 IBSA Football 5-a-Side Regional Qualifier! If the host country qualifies through the 2010 IBSA World Championships Allocation, the 2 nd ranked NPC at the 2010 IBSA World Championships qualifies.	1 team
TOTAL	Male	8 teams

E. *The Handbook*

The Handbook provides, *inter alia*, as follows:

“1 DEFINITIONS AND GENERAL PROVISIONS FOR THE ORGANIZATION OF THE PARALYMPIC GAMES

1.1 Definition of the Paralympic Games and position within the Paralympic Movement

The Paralympic Games represent the peak moment of each quadrennial sports cycle for Paralympic athletes and constituents of the Paralympic Movement. They form the ultimate goal to which national, regional and world championships and other competitions lead up to.

In accordance with IPC's vision “to enable Paralympic athletes to achieve sporting excellence and inspire and excite the world”, the key objectives of the Paralympic Games are:

To allow Paralympic athletes to achieve their best performance at the highest level of competition by providing appropriate conditions and services in an operationally sound environment.

To ensure the visibility, distinctiveness and promotional opportunities that showcase the spirit and values of the Paralympic Movement.

To act as catalyst that stimulates social development and leaves a positive long-term legacy that benefits communities in the host country and across the world.

1.2 Ownership of the Paralympic Games and authority of the IPC

The International Paralympic Committee (IPC) has a mission to guarantee and supervise the organization of successful Paralympic Games.

2 GENERAL RULES AND PRINCIPLES FOR PARTICIPATION IN THE PARALYMPIC GAMES

2.1 Eligibility Code Compliance

(...)

2.8 Dispute Arbitration

All disputes related to sports technical rules, such as competition, field-of-play and Classification are under the authority of the respective IPSFs and IPC, and shall be resolved by IPC, whose decision on these matters is final and enforceable.

Any other disputes arising on the occasion of, or in connection with, the Paralympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration.

(...)

3.2 Responsibilities of IPC

3.2.1 General Role

As the owner of the Paralympic Games, the IPC shall oversee and co-ordinate the organization of the Paralympic Games in order to ensure their best possible success and the satisfaction of all participating constituents.

In addition, IPC shall ensure the protection and integrity of the Paralympic Games as the ultimate property of the Paralympic Movement and the conformity of Paralympic Games organization to the respective requirements and the application of Games content and processes.

(...)

3.5 Role, rights and obligations of the International Paralympic Sport Federations (IPSFs)

(...)

3.5.1 Definition

IPSF is the generic term used to describe the governing body of a sport that is in the Paralympic Sport Programme of the respective Paralympic Games. The IPSF is the corresponding body for an International Federation (IF) as this applies for the Olympic Games. An IPSF may have the form of:

(...)

- *An international sport federation (IF), for a sport included in the Paralympic sport programme.*

3.5.2 General Role

(...)

3.5.4 Responsibilities Prior to the Paralympic Games

The IPSEs have the responsibility of providing adequate sport structures and resources in order to facilitate and develop their sport in order to provide for elite level competition during the Paralympic Games. This includes - but is not limited to- the following:

- *Maintain analytical and reliable world and regional rankings and records*
- ***Contribute, with IPC, to the development of a consistent and reliable qualification system and allocate athletes' slots to the Paralympic Games using a consistent, transparent and reliable process.***

(...)

- *Verify the final entries of the NPCs to the Paralympic Games based on the processes and criteria specified above.*

4.2 **Criteria for Admission of Sports and Disciplines**

4.2.1 *Sport Governing Body Eligibility*

An IPSE is the sole worldwide representative of the specific sport for athletes with a disability, being granted the status of Paralympic Sport by the IPC Governing Board.

An IPSE, as specified above needs to be a member of IPC, fulfilling the general membership conditions to IPC as specified in the respective section of the IPC Handbook.

In addition, the IPSE needs to:

(...)

- *Demonstrates a sustainable governance and organizational infrastructure to effectively manage the administration and ensure operational viability and quality of its sport(s).*

(...)

4.2.2 *Sport's Worldwide Reach Eligibility*

Further to the eligibility of the respective international governing body, a sport needs to fulfil the following criteria in terms of worldwide reach in order to be eligible for inclusion in the Paralympic sport programme:

For Paralympic Games

Only individual Sports and individual Disciplines widely and regularly practised in a minimum of twenty-four (24) countries and three (3) IPC regions may be considered for inclusion in the Paralympic Games.

Only team sports and disciplines widely and regularly practised in a minimum of eighteen (18) nations and three (3) IPC regions will be considered for inclusion in the Paralympic Games.

The calculation to determine the number of nations widely and regularly practising a sport or discipline may include the following:

- *Holding recognized/ sanctioned National Championships within the last four (4) years,*
- *Competing with a national delegation in international recognized/ sanctioned competitions on a regular basis within the last four (4) years, and/ or*
- *Demonstrating frequent and widespread sport-specific opportunities for athletes with a disability within the last four (4) years*

Applying Sports and Disciplines must provide evidence that they have a regular quadrennial competition programme, including two (2) World Championships hosted within the last eight (8) years

- *Holding recognized/ sanctioned National Championships within the last four (4) years*
- *Competing with a national delegation in international recognized/ sanctioned competitions on a regular basis within the last four (4) years, and/ or*
- *Demonstrating frequent and widespread sport-specific opportunities for athletes with a disability within the last four (4) years*

Applying Sports and Disciplines must provide evidence that they have a regular quadrennial competition programme, including two (2) World Championships hosted within the last eight (8) years.

4.4.1 Invitation to participate

The invitation to take part in the Paralympic Games shall be sent out by the OCOG twelve (12) months before the respective Paralympic Games on the instructions of IPC. The invitation shall be addressed to all NPCs, shall be jointly signed by the President of IPC and the President of the OCOG and shall be in the following terms:

“The International Paralympic Committee and the Organizing Committee for the Olympic Games and Paralympic Games has the honour to invite you to participate in the..... Paralympic (Winter) Games which will take place in from..... to.....”.

(...)

The qualification standards, conditions and procedures for each specific edition of the Paralympic Games are determined and announced thirty (30) months prior to the Paralympic Games in question.

4.4.4 Number of participants per country

A country may enter only one team in team sports or in team events within individual sports”.

Merits

5. There is no uniform law which applies to selections for participation in sporting competitions in general or in the Olympics or Paralympics Games in particular. Some are based on objective criteria, some on subjective criteria, some on a mixture of both criteria.
6. The advantage of wholly objective system i.e one which depends upon ascertainable results or rankings is that it obviates controversy which attends upon the exercise of subjective judgment.

The advantage of a subjective system i.e. one which does depend upon the judgment of the selectors is that it obviates the possibility that, notably in individual events, the best candidate may, through injury or illness or accident, may be unable to compete, or even if able to compete, be eliminated in sudden death trials.

7. CAS has developed certain principles to govern selection disputes principally that:
 - (i) selection criteria should be as objective as possible (CAS OG 06/008 para 112).
 - (ii) where selection criteria are objective they must be adhered to (CAS OG 06/008 para 35).
8. The selection instrument in the present case ie the Criteria is precise and prescriptive, and characteristically of team competitions, is substantially based on results of qualifying competitions. Unfortunately – but understandably – it has not catered for every eventuality; and in this – from CAS’s perspective – unprecedented situation previous CAS jurisprudence provides no particular guidance.
9. The Criteria are not unique in having such a lacuna. The Olympic selection criteria for the USA Track and Field Team is the classic example of a wholly objective system; the first three in the trials are, if otherwise eligible, automatically selected. In 2012 there was a dead heat for third place in the women’s 100 metre sprint. The selectors, also without guidance in precedent, offered a choice between a run-off and toss of a coin with a run off the default option, if the two could not agree. In the event one of the two declined the run off option so that the other was automatically selected.
10. It is – correctly - common ground that
 - (i) IBSA had a discretion;
 - (ii) Such discretion had to be exercised fairly and rationally.
11. In order to determine whether the first decision satisfied the principles in 10(ii) it is necessary to identify the basis upon which the decision was taken; and for that purpose to focus on the most contemporary documentation rather than accept any *ex post facto* rationalisation.
12. The Sole Arbitrator does not consider that there was anything irregular about the procedure by which the first decision was taken. There is no evidence put before by JPC that it was taken by the wrong person or body under the statutes of IBSA. The principle *omnia rite praesumuntur esse* applies.
13. There are some discrepancies between the three explanations for the substance of the first decision, given by IBSA (see above) in particular as to whether:
 - (i) the drawing of lots was considered at all;
 - (ii) the world ranking lists influenced the decision;
 - (iii) the need to inform LOCOG of the participants by a particular date played a part.

14. Had there been an oral hearing the reasons for such discrepancies might have been briefly explored. It may be that the explanation is that each had a different author, Mr Campos, Mr Barredo and Mr O'Donovan who gave different weight to various factors or whose recollection simply differed or whose draftsmanship was imperfect.
15. The Sole Arbitrator is ultimately unpersuaded that these discrepancies are material, has no reason to believe that the explanations were contrived; and considers that he is sufficiently informed on matters essential to his decision not to seek further clarification of these peripheral points or to propose to the parties that an oral hearing is in fact required.
16. The Sole Arbitrator is prepared to proceed on the basis that:
 - (i) Turkey was selected because of its membership of the strongest region and its place within the most recent regional championship, whether or not also because of its world ranking which no doubt reflected those former factors.
 - (ii) A play-off was considered, but rejected for reasons of timing i.e. the difficulty in fixing any play off in time for provision to LOCOG of the list of competitors as required by the Qualifying Timeline in the Criteria.
 - (iii) Drawing of lots was not considered.
17. It is no doubt preferable in the context of sport, where possible, for outcomes to depend upon events on the field of play-not least, if not only, where selection for Olympics and Paralympics is at stake, given the unique status of those particular competitions; but there is no rule to that effect.
18. It is important in this context to note that:
 - (i) IBSA could have decided not to reallocate the slot at all. Indeed given that the criteria made no provision for the reallocation in the first decision, it could be argued that leaving a vacancy most closely reflected the letter of the criteria. In the Sole Arbitrator's view, however, it did not reflect their spirit (and on that all parties agree). It seems to the Sole Arbitrator to be a general principle of sporting law that where possible an opportunity to compete should be enhanced rather than be curtailed.
 - (ii) IBSA obviously recognized that the decision to be taken was a difficult one in that sense; there was nothing arbitrary about the way in which it took the decision; contrast a coin toss or drawing of lots (whether seriously considered or not).
 - (iii) IBSA had to take in account practical considerations (i.e. LOCOG's urgent need to know the participants-in the competition) which had to temper any instinctive preference for the solution proposed by JPC.
 - (iv) If a play off was impractical (or indeed even if it was not) the choice of Turkey, given the standing of the European Region as well as Turkey's standing within it, made its candidature to fill the vacancy compelling
 - (v) IBSA's decision had the backing of the IPC.

19. Under R57 of the CAS Code the Sole Arbitrator can review the first decision on fact and law; but the issue before the CAS is whether IBSA's decision was fair and reasonable. If it was, it matters not that the Sole Arbitrator might have taken a different decision. Persons can reasonably differ in their reactions to the same situation. The Sole Arbitrator finds nothing unreasonable in Japan's request for a play-off; but, on account of the factors set out in the previous paragraph, the Sole Arbitrator finds nothing unreasonable in the first decision taken by IBSA or their refusal to reverse it.
20. If the first decision was, as it is the Sole Arbitrator's opinion, unimpeachable, it follows inexorably that the second one was too. The Sole Arbitrator does not need to explore whether, and to what extent, under its statutes IPC could have overruled or otherwise procured a view by IBSA of its first decision.

The Court of Arbitration for Sport rules:

1. The claims for relief made by JPC against IBSA and IPC in its Appeal of 21st June 2012 before CAS are all dismissed.
2. (...)
3. All other or further prayers of relief are dismissed.