



**Arbitration CAS ad hoc Division (OG Athens) 04/008 Comité National Olympique et Sportif Français (CNOSF) v. International Canoe Federation (ICF), award of 23 August 2004**

Panel: The Hon. Michael Beloff QC (United Kingdom), President; Mr Sharad Rao (Kenya); Mr David Rivkin (USA)

*Canoe*

*Reallocation of unused quota places*

*Application of the Reallocation of Unused Quota Positions (ROUQP)*

*Importance of time limits in the process of reallocation*

- 1. The ROUQP is designed to inject other considerations than those of pure merit into the selection process. These considerations include (i) the interest of the host nation, (ii) geographical diversity and (iii) gender balance.**
- 2. The reallocation process itself is subject to important time limits. The reallocation of any unused quota places has to be confirmed by a certain date in order to ensure that the time limit for entry prescribed by the Organisation Committee is complied with. After that date, reallocation of any unused quota places is not compulsory. During that later period, duty is diluted to discretion, and there is no abuse of discretion in declining a request for adding athletes to heats which have already been constituted and scheduled, less than 24 hours before the competition commences.**

This appeal arises out of the refusal of the ICF on 22 August 2004 to reallocate two quota places to the CNOSF, on the eve of the competition in the Men's C2 1000 in the Games of the XXVIII Olympiad.

The following persons attended the hearing:

For the Applicant (CNOSF)

- Mr Laurent Chabaud, Director-Counsel of the CNOSF \*
- Mr Antoine Goetschy, Technical Director of the National French Canoe Kayak Federation ("FFCK") \*

For the Respondent (ICF)

- Mr Jose Perurena, Secretary General \*
- Mr Volker Bernardi, Administrative Director \*

The Interested Party (IOC) was unrepresented (see below).

Interpreters

- Ms N. Badetz, Mr S. Mines, Ms E. Thebault, M. J. Fearnside-Bitsios, Ms M.-T. Grossetete

The persons with asterisks against their names gave oral evidence before us.

Documentation, including inter-party correspondence, was attached to the “Demande d’arbitrage”. The Panel also considered (i) the ICF “Participation Criteria”, (ii) the ICF Special Rules for the Olympic Games, (iii) the Olympic Charter, (iv) the IOC Olympic Entries and Qualification Guide and (v) the IOC information about Late Athlete Replacement Policy. Of those regulatory instruments (i) was, in the Panel’s view, of primary importance.

It is inherent in the role that the ad hoc Division Panel performs at the Olympic Games that it should act with speed. We should nonetheless draw attention to significant features attendant upon the instant appeal. (i) The application was notified orally to the CAS office at 05:45pm. (ii) The written application and supporting documentation were faxed at 07.30pm. (iii) The Panel had 30 minutes only to scrutinize them in advance of the hearing which took place at 09:00pm; the Respondent, the ICF, had no more than 20 minutes. (iv) Because of the short notice coupled with the dislocation caused to the traffic in Athens by reason of the Women’s Marathon, the ICF were unable to secure the presence of their technical experts; neither party was in a position to supply full documentation, and the IOC, an interested party, was unable to attend at all. (v) During the hearing itself, the essentially Anglophone Panel was addressed by three persons in English, none of whom spoke it as their first language, and by a fourth in French which required (admittedly excellent) interpretation. These factors inevitably lengthened and complicated the hearing. (vi) The competition, the focus of the application, was due to start at 08:30 am on the next morning so that a determination had to be (and was) reached before midnight. While we are confident that our decision is correct, we note that a more extended time frame would have ensured a more robust understanding of the underlying dispute.

FFCK was not entitled to any places at all via the route of qualification but as early as 26 May 2004 CNOSF advised ICF that if it was the recipient of reallocated quota places it would use them all in the light of the competitiveness of the French boats. It referred to the duty of NOCs to confirm entry of boats and numbers of athletes by 18 June 2004.

On 13 July 2004, the ICF Executive Board decided on quota reallocations under ROUQP and placed these reallocations on its website.

On 13 July 2004, CNOSF confirmed to the ICF that if any quota places should become available, it would submit the names of Eric Leleuch and Laurent Barbey for the Men’s C2 1000m race. This statement was confirmed in a letter dated 16 July 2004 from FFCK to ICF, which listed all French competitors “*who might take part in Flatwater Racing during the Olympic Games Athens 2004*”.

On 20 July 2004, CNOSF submitted to ATHOC in advance of ATHOC’s entry deadline of 21 July 2004 the names of 8 athletes for canoe/kayak flatwater racing, including Messrs Leleuch and Barbey for the Men’s C2 1000 race.

Between 13 July and 21 July 2004, ICF re-allocated approximately 20 unused quota places and, it was common ground, by that means filled all 246 places available. The ICF conceded at the hearing that

in doing so, it did not follow its own re-allocation rules set out in its Participation Criteria (see further below). The re-allocated positions included two French male paddlers who were subsequently entered in both the Men's C2 500m and C2 1000m races.

On 26 July 2004, FFCK wrote to ICF raising some questions about ICF's re-allocations. The FFCK noted among other points that the Leleuch-Barbey boat is next in the ranking list under the rules in the Participation Criteria and "*must be qualified*". The letter further stated:

*In case ICF discover that some more places are available after that the nominative entry list had been completed (July 21<sup>st</sup>) or after the Flatwater Team Leader Meeting (in case Late entry policy could be used), France would like to have one of its two boats qualified and participating (1 to 4 extra places).*

*We want neither to argue with our International Federation nor to appeal to IOC or the Court of Arbitration for Sport as this will end with very bad image for our sport.*

*We trust ICF for its capability to make the best decision for the future of our sport in respect of the official rules and it's National Federation interest.*

*We know that you'll listen to our proposals and at least that you'll give us an answer or the opportunity to explain our point of view.*

On 5 August 2004, according to Mr Goetschy's evidence at the hearing, he saw for the first time the full list of competitors entered in the canoe/kayak races which confirmed his belief that errors had been made in the allocation process. While his questions were consistent with the attitude exemplified in FFCK's letter of 26 July, neither FFCK nor CNOSF formally challenged the ICF's allocations.

On 10 August 2004, FFCK again wrote to ICF and stated that "*ICF has not followed its own qualification system for Athens Olympic Games regarding flatwater events*" and argued that re-allocations had not been made according to the ICF's Participation Criteria. However, the letter complained only about certain French woman kayak competitors. The letter did not mention the Leleuch-Barbey boat.

The ICF and the FFCK subsequently agreed on the allocation of a newly opened quota position for a French woman kayak competitor.

At the Technical Meeting held on 21 August 2004, the FFCK learned that three Chinese paddlers and one Romanian paddler would not be competing. As a result, four quota slots would not be used. At the Technical Meeting, the FFCK asked that Messrs Leleuch and Barbey be added and that they be substituted for the French male paddlers then entered in the Men's C2 1000m event. However, no action was taken at the meeting by the ICF in response to that request.

Later that day, the FFCK wrote to ICF asking that Messrs Leleuch and Barbey be allocated two of the unused quota places and placed in the Men's C2 1000m event on 23 August 2004. The letter stated in relevant part:

...

*Today, was held at the venue, team leader meeting for flatwater discipline.*

*During this meeting China and Romania have made changes in term of nominative athlete's participation.*

*According to my actual information (Info 2004-22<sup>nd</sup> July), it appears that 4 quotas places will remain unused after those changes. 4 accredited athletes have been withdrawal by their team leader and will not compete: 2 from C2 Men (CHN: Mr GONG nber 66 and ROM: Mr Cuculici nber 189) and 2 from K1 Women (CHN: Mrs SUN nber 56 and Mrs Zhang nber 58).*

*ICF Olympic qualification rule is really clear about this matter:*

#### GENERAL PRINCIPLES

##### Athlete eligibility/participation

- *Every accredited athlete must compete in an event at the Olympic Games, unless in exceptional circumstances approved by ICF.*
- *It is not possible to enter an athlete in the Olympic Games only as a substitute.*

*I would like to give you my comments about this situation.*

*If those 4 athletes will not be able to compete, it means that flatwater canoeing will loose 4 places at next Olympic Games in Beijing. We all know that this will be a disaster for our sport's development.*

*In case ICF would like to prevent this disaster, our NOC is offering you a possible solution: we have two athletes already in Athens and able to compete Monday in C2 1000 meters. They have been inscribed by our NOC the 21<sup>st</sup> July using official sport entry form (copy attached) and they have their combined card, they are:*

- *Eric Leleuch registration number: 1721481*
- *Laurent Barbey registration number: 11721458*

*In this case Yannick Lavigne and José Lenoir inscribed for the moment on both distances will only compete in C2 500 meters. Our C2 1000 meters is ranked 24-25 in the quotas reallocation waiting list (see attached document) and was ranked 12<sup>th</sup> in Gainesville 2003.*

*This is an exceptional situation where ICF could use IOC late athlete replacement policy due to other exceptional reasons that might occur, in addition to medical reason:*

*As a general rule, it is possible to make athlete replacements only up to the time of the Technical Delegates Meeting for the relevant sport ...*

*... The above-noted policy is subject to further change by the IOC for exceptional circumstances.*

*We hope Mr President that you will accept to reallocate two remaining quotas places to Mr Eric Leleuch and Mr Laurent Barbey in order to use the maximum number of places allocated by IOC to our sport.*

*We are waiting for your positive answer tomorrow and we remain at your disposal in case you need more information or explanation.*

On 22 August 2004, a Jury of the ICF considered FFCK's request to add Messrs Leleuch and Barbey and rejected it.

On 22 August 2004, the ICF so informed FFCK by letter.

Later that day, FFCK commenced these proceedings.

## LAW

1. These proceedings are governed by the CAS Arbitration Rules for the Olympic Games (the “CAS ad hoc Rules”) enacted by the International Council of Arbitration for Sport (“ICAS”). They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS ad hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of Arbitrators, pursuant to Article 7 of the CAS ad hoc Rules.
2. The ad hoc Division of the Court of Arbitration for Sport (Athens, Greece) has jurisdiction over NOCs by reason of Rules 4.1, 31 and 74 of the Olympic Charter and over IFs by reason of Rules 4.3, 29, 30 and 74 of the same instrument. In short, by reason of the benefits which accrue to each type of organisation by reason of their recognition by the IOC, each can be deemed to have subscribed to the arbitration clause in Rule 74. This conclusion is fortified by the undertaking of each to promote the Olympic Charter in the particular manner set out in it (see OG 00/002; OG 04/001). It has jurisdiction over the IOC by reason of Rule 74 of the Olympic Charter.
3. As appears from the chronology, the CNOSF has duly exhausted internal remedies so as to engage the jurisdiction of the ad hoc Division, again as required by Article 1 of the CAS ad hoc Rules.
4. According to Article 17 of the CAS ad hoc Rules, the Panel must decide the dispute “*pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate*”.
5. According to Article 16 of the CAS ad hoc Rules, the Panel has “*full power to establish the facts on which the application is based*”.
6. Rule 49 of the Olympic Charter provides:  
Entries:  
“*Only NOCs recognized by the IOC may enter competitors in the Olympic Games. The right of final acceptance of entries rests with the IOC Executive Board*”.
7. Rule 57 of the Olympic Charter provides:  
Technical Arrangements:  
“*For all technical arrangements of the Olympic Games, including the schedule, the OCOG must consult the relevant IFs*”.

8. The Participation Criteria of the ICF as approved by the IOC (“Participation Criteria”) provide, so far as material

**International Canoe Federation  
 (ICF)  
 Canoe/Kayak Flatwater Racing**

**EVENTS**

**Men**

- ...  
 C-2 500m  
 C-2 1000m

**ATHLETE / NOC QUOTA**

*Athlete quota:* 174 men  
 72 women  
 Total of 246 athletes

*Maximum per NOC:*

*NOCs may qualify boats in all events, with a maximum number of 1 boat per event*

**QUALIFICATION SYSTEM**

*Total number of qualified boats and athletes*

*The total number of qualified boats by events in the qualification competitions will be as follows:*

<b>Events</b>	<b>Number of qualified boats</b>	<b>Number of qualified athletes</b>
<i>Men</i>		
...		
<i>C2 1000M MEN</i>	<i>10</i>	<i>20</i>
<i>C2 500M MEN</i>	<i>10</i>	<i>20</i>
<b>Total Men</b>	<b>102</b>	<b>174</b>
<b>Total</b>	<b>134</b>	<b>246</b>

**GENERAL PRINCIPLES**

*Attribution of qualification places*

*Qualification places are allocated to NOCs and boats and not to athletes.*

Athlete eligibility/participation

- In order for a NOC to qualify a boat for the Olympic Games, each individual competitor must be eligible to compete for the respective National Federation (NF) and NOC at the time of the particular qualification competition.
- Every accredited athlete must compete in an event at the Olympic Games, unless in exceptional circumstances approved by the ICF.
- ... one athlete may start in more than one event.
- The NOC has the right to enter the athlete(s) of the qualified boat(s) in other non-qualified event(s) of the same category within the total number of qualified athlete(s) in each category.

**DEFINITIONS**

**Competitions:** All World Championships  
 All World Cups  
 All International Competitions

**Categories:** Kayak Men  
 Kayak Women  
 Canoe Men

**Classes:** K1 M - K2 M - K4 M  
 K1 W - K2 W - K4 W  
 C1 M - C2 M

**Events:** Each Class in each distance (e.g. C1 1000m M)

**SYSTEM IN DETAIL**

Qualification may be achieved either at the 2003 World Championships or at nominated continental qualification events, in accordance with the following table:

<b>Events</b>	<b>Total</b>	<b>2003 WC</b>	<b>Continental Qualification</b>	<b>Europe, Africa and Oceania</b>	<b>Asia</b>	<b>America</b>
C2 1000m Men	10	6	4	2	1	1
...						
C2 500m Men	10	6	4	2	1	1
<b>Total Men</b>	<b>102</b>	<b>58</b>	<b>44</b>	<b>26</b>	<b>9</b>	<b>9</b>
<b>Boats</b>	<b>134</b>		<b>57</b>			
<b>Athletes</b>	<b>246</b>		<b>103</b>			

...

### Continental Qualification Events

*For NOCs in Europe, Africa and Oceania, the continental qualification event will be held within an existing event in Europe.*

...

### **QUALIFICATION TIMELINE**

...

5 June 2004	<i>ICF to confirm qualification places to NOCs; Tripartite Commission to confirm allocation of Invitation places</i>
18 June 2004	<i>NOCs to confirm the entry of boats and numbers of athletes</i>
20 June – 20 July 2004	<i>ICF to confirm reallocation of unused quota places</i>
21 July 2004	<i>Deadline for Athens 2004 Organising Committee to receive entry forms submitted by NOCs</i>

### **DATES / PROCESS OF CONFIRMATION OF PLACES**

*The ICF will inform each respective NOC and NF of the number and category of the boat(s) that they have qualified for entry by 5 June 2004. The NOCs which have qualified boats must confirm the use of these quota places and confirm the number of athletes they will enter to the ICF in writing by 18 June 2004.*

*From 20 June to 20 July 2004, the ICF will confirm the reallocation of any unused quota places.*

### **REALLOCATION OF UNUSED QUOTA POSITIONS**

#### **("ROUQP")**

*In the event that an NOC does not enter one of its qualified boats in the Olympic Games, or if the number of athlete positions allocated does not reach 246, the allocation of the remaining quota places will be placed under the supervision of the Secretary General and the two Olympics Discipline Chairmen, and allocated in the following order:*

1. *Host nation*  
*Ensure the minimum participation of the host nation in accordance with the specifications in the section 'Host nation qualification' above.*
2. *Africa and Oceania*  
*If no NOCs in Africa and/or Oceania have qualified a boat in any event of all categories (kayak men, kayak women, canoe men) after the 2003 Senior World Championships and the European continental*



*qualification event, then one boat place will be allocated in each missing category (a K1 Men and/or a K1 Women and/or a C1 Men) to both of Africa and Oceania out of the remaining quota places. This boat place will be awarded to the NOC which has achieved the best ranking in the 2003 Senior World Championships and/or European continental qualification 2004 with priority to the best ranking in the 2003 Senior World Championships.*

3. *Remaining places*

*Any remaining places will be allocated to the next best ranked unqualified boat from the 2003 Senior World Championships in the following order:*

- i. in the event of a qualified boat not entering*
- ii. to the next monoplace or biplace boat in accordance with the following repeating order and starting with the 500m*

<i>Monoplace boats:</i>	<i>Canoe Men</i>	<i>Kayak Women</i>	<i>Kayak Men</i>
<i>Biplace Boats:</i>	<i>Canoe Men</i>	<i>Kayak Women</i>	<i>Kayak Men</i>

In summary, there are two routes to participation: the route of qualification and the route of receipt of allocation of unused quota places.

9. The Olympic Entries and Qualification Guide provides so far as material, as follows:

*Introduction*

*The process known as “Entries” provides for the official entry of eligible athletes into the Olympic Games. According to Rule 49 of the current Olympic Charter, entry forms must be completed for all competitors in the Olympic Games. There are two types of forms: The Sport Entry Forms and the Entry Form – Eligibility Conditions. Sport Entry Forms must be completed for each eligible athlete or team qualified and entered in an Olympic Competition. An Entry Form – Eligibility Conditions must be completed for every member of the NOCs Delegation and signed by each one individually. Also an Application for Accreditation must be received for each potential athlete by the Accreditation deadline, which is 28 April 2004.*

***Final Entries***

*The Olympic Entries and Qualification System has been developed into a two-part process, so as to manage the official registration of athletes for the ATHENS 2004 Olympic Games.*

*The first phase is Qualification Verification. This began in January 2003 and will run through the end of the qualification period.*

*The second phase is Final Entries, where NOCs must submit the names of all qualified athletes who will be competing in the ATHENS 2004 Olympic Games. ATHOC must receive Sport Entry Forms and Eligibility Conditions Forms from participating NOCs by midnight (Greek time), on 21 July 2004, with a copy forwarded to the relevant International Federation.*

...

### ***Entries Checklist***

*Sport Entry Forms (CD ROM with Acrobat file – or hard copies)*

*Entry Form – Eligibility Conditions*

...

### ***Returned***

*Applications for Accreditation* 28 April 2004  
*(For all potential athletes and team officials)*

*Sport Entry Forms* 21 July 2004

*Entry Form – Eligibility Conditions* 21 July 2004  
*(For all athletes and team officials)*

### ***Entry Forms***

*In addition to this manual, NOCs will receive the following Entry Forms:*

#### ***Sport Entry Forms***

##### ***For all Athletes***

*A Sport Entry Form (individual or team) is required for each athlete eligible to participate in the ATHENS 2004 Olympic Games. This form officially registers the athlete for Olympic competition and is to be completed by the NOC in conjunction with the respective National Federation (NF). Sport Entry Form should only be submitted for those athletes who have qualified and have been selected to compete by the NOC.*

*The Sport Entry Form for all athletes must be submitted to ATHOC, along with the Entry Form – Eligibility Conditions by 21 July 2004.*

...

### ***Deadlines***

#### ***28 April 2004***

*Applications for Accreditation*  
*(For all potential athletes and team officials)*

### **21 July 2004**

*Sport Entry Forms and Returned Forms Summary  
(For qualified and eligible athletes only)*

*Entry Form – Eligibility Conditions  
(For all athletes and team officials)*

*The completed Sport Entry Form for athletes and Entry Form – Eligibility Conditions for athletes, coaches, trainers and officials **must reach ATHOC no later than midnight (Athens time) on 21 July 2004.***

10. The Late Athlete Replacement Policy for 2004 Athens Olympic Games specifies, *inter alia*,

*The deadline for the final lists of athletes for each sport to participate in the Games of the XXVIII Olympiad in Athens in 2004 (the “Athens Olympic Games”) is 21 July 2004. However, in exceptional circumstances (-e.g. medical or otherwise) and on a case-by-case basis, the IOC, after consultation with the relevant International Federation, may permit permanent replacement of an athlete by another athlete after the above-noted date provided that:*

- (i) the replacement athlete is entitled, and qualified, to take part in the Athens Olympic Games as stipulated in the “Games of the XXVIII Olympiad, Athens 2004 Participation and Qualification Criteria” document published in 2002, and regularly updated by the IOC; and*
- (ii) the National Olympic Committee (“NOC”) of the replacement athlete had applied for accreditation for such athlete prior to the application for accreditation deadline, namely, 28 April 2004.*

*In addition, the following procedures must be carried out in order for an athlete to be replaced by another athlete:*

*... the accreditation card of the athlete being replaced must be withdrawn and handed over...*

*As a general rule, it is possible to make athlete replacements only up to the time of the Technical Delegates Meeting for the relevant sport, with the exception of the discipline of Canoe/Kayak Flat-Water Racing and the sports of Equestrian, Fencing (P accreditations) Rowing (P accreditations) and Football (P accreditations).*

11. CNOSF submitted as follows:
12. ICF is obliged to fill the four unused quota if the number of athletes position allocated does not reach 246 places. The ICF Olympic Qualification Rule in the matter requires that “Every accredited athlete must compete in an event at the Olympic Games, unless in exceptional circumstances approved by ICF. It is not possible to enter an athlete in the Olympic Games only as a substitute”.
13. The ICF did not strictly follow the reallocation rule, and the French team of Leleuch/Barbey should have been considered during the third round of quota distribution for additional places.
14. The present is an exceptional situation in which ICF could use the IOC Late Athlete Replacement Policy on the basis of exceptional reasons other than medical reasons.

15. Leuleuch and Barbey are duly accredited competitors present at the Games and could make use of two of the places now available as a result of the Chinese and Romanian withdrawal. This would not in any way prejudice the other competitors taking part in the event.
16. Between Sydney and Athens canoeing sport has lost 20 places because of the substitute policy of some of the National Federations and if the four available places are not allocated, flatwater canoeing would lose four places at the next Games in Beijing.
17. No competitor from an NOC would lose his place if the French request was granted. These paddlers would simply take the place of the two French paddlers already entered in the Men's C2 1000m event.
18. The ICF submitted as follows:
19. The event is due to take place on 23 August 2004 at 08:30 am.
20. The Technical Delegates Meeting took place on 21 August 2004. It was at that meeting that China and Romania made changes that give rise to the four places that will remain unused and of which France applied to fill two.
21. The Technical Delegates Meeting having concluded, only the IOC can authorise the addition of the two late entries.
22. There is no obligation on the ICF to allocate the four places that have now become available.
23. The procedure of added allocation has for practical purposes to terminate at a certain stage, and it was agreed by all participating countries that it should be done latest at the Team Leaders Meeting.
24. Further it does not follow that if these unused places are to be filled France would be the automatic beneficiary of that action, as it is not possible to say at this late stage whether any other country or countries would not have a more eligible claim to the positions than France, and it would not be equitable to favour France just because CNOSF has two competitors in Athens available to take advantage of the two unused places.
25. To decide whether or not the ICF was guilty of error in its application of the ROUQP requires first an analysis of the meaning of that provision and secondly an analysis of how that provision, once construed, was applied to the facts.
26. The methodology for the reallocation of unused quota positions is carefully prescribed in the Participation Criteria. It is, in our view and contrary to the position of the ICF, compulsory for the ICF to reallocate such positions if the number of 246 is not reached. The language used is the language of obligation, not discretion.
27. The ROUQP is designed to inject other considerations than those of pure merit into the selection process in what the ICF perceives as the greater interest of the sport (pure merit is catered for in the provisions for qualification). These considerations include (i) the interest of the host nation (ii) geographical diversity and (iii) gender balance. These rules, although

complex, are relatively easy to unravel. In the context of the present application it is necessary only to focus on the third paragraph, “Remaining places”, in which subparagraph (ii) sets out an order of priority by reference to type of boat (monoplace or biplace), type of category (eg: canoe men, kayak women, etc...) and distance of race (eg 500m or 1000m).

28. It is in respect of this exercise of re-allocation that the ICF was alleged to have erred. As was put in the CNOSF’s written submission *“Si la FIC avait suivi l’ordre de priorité qu’elle avait elle-même fixé, elle aurait dû attribuer 2 places à la France (C2 1000m hommes) juste après le K1 1000 hommes de la Slovénie. L’attribution de ces deux places résultait d’une simple application “numérique” des règles que la FLC avait fixées”*.
29. The Panel’s difficulty in resolving this issue stems from the fact that the document relied on by the CNOSF, the so-called “ICF Qualification file”, was not an ICF document at all, but one generated, it seems, from ICF sources by the CNOSF. Thus it was not possible to have the necessary confidence that it provided the material which would enable the Panel to say whether the ICF had departed from the ROUQP, since the starting point of any such analysis had to be the identification of the next best ranked unqualified boat from the 2003 Senior World Championship in the listed categories and in the listed order.
30. Given that the ICF readily admitted to some adjustment of the ROUQP (with the apparent imprimatur of its Executive Committee) for reasons of practicality and positive gender favouritism, it may have erred in its allocation of the remaining places as judged by the ROUQP as drafted. Fortunately, our determination does not require resolution of this controversial issue.
31. We would add, however, that we were unsympathetic to the revelation by the ICF, to which we have already referred, that the methodology as drafted has been departed from for reasons of practicality or even such values as positive discrimination in favour of female athletes. Rules are there to provide guidance to administrators and those who are administered; if inconvenient or obsolete, they should be constitutionally altered, not simply ignored.
32. The CNOSF argues that if the letter of the reallocation rule was followed, the ICF has erred and that Messrs Leleuch and Barbey were entitled, among others, to be the beneficiaries of a proper reallocation. There was some dispute as to when the CNOSF should have been alerted to this alleged error – the existence of which was not conceded by the ICF – but on the view of the facts most favourable to the applicants, it was no later than 5 August 2004 when CNOSF had access to the actual names of the recipients of these places.
33. The CNOSF had the option of pressing its cause by appeal to appropriate authorities, including ultimately the CAS ad hoc Panel, to enforce its asserted rights or by negotiation and conciliation. We have already noted that in its letter of 10 August 2004, while referring to an alleged departure from the stipulated reallocation procedure by the ICF, it asked only for additional places for two K2 500m women, believing, as its representatives candidly told us, that it would have a more receptive response if it pleaded a female rather than a male cause. In its letter of 21 August 2004, it made no reference to any entitlement of the French athletes but rather, praying in aid the adventitious and recent decisions of the Chinese and Romanian NOCs not to utilise their places, asked, in the wider interests of the sport, to ensure that all places were filled so that the

risk that flatwater canoeing might lose four places at the next Olympic Games in Beijing might be averted.

34. This Panel does not wish to say anything to deter sensible negotiation of sporting disputes (as long as these do not result in deliberate departure from the governing rules). However, there comes a time when a choice has to be made by the aggrieved party as to how that grievance should be redressed.
35. The path of negotiation having proved, in the light of the rejection by the Jury of its request of 21 August 2004, to be a *cul de sac*, it was in all the circumstances of the present case far too late, in our view, for CNOSF to retrace its steps and to take the path of litigation.
36. Insofar as the CNOSF simply rely on the present existence of unused quota places, it seems to us that its claim is no better than that of any other country. The principle of equality of treatment is a general and valuable one. The mere fact that CNOSF has been astute enough to give advance warning of its desire to make use of any places that might become available, and have paddlers ready to perform, should not gain it an advantage. The ICF at most have a discretion to confer this benefit upon it. We are in no position to fault the decision of the Jury denying that benefit to CNOSF.
37. The reallocation process itself is subject to important time limits (cf. CAS Arbitration N° CAS OG 04/006, paras. 15, 17 and 25). The Participation Criteria make doubly clear that the reallocation of any unused quota places will be confirmed by 20 July 2004 in order to ensure that the time limit for entry prescribed by ATHOC is complied with. They certainly do not contemplate a compulsory reallocation of any unused quota places after that date. During that later period, duty is diluted to discretion, and there was no abuse of discretion in declining the French request for adding their athletes to heats which had already been constituted and scheduled, less than 24 hours before the competition commenced.
38. In any event, the CNOSF's letter of 21 August, to which we have already referred, acknowledges that it would be for the IOC to allow athlete replacements. What is sought is in fact an athlete addition, not replacement - two more places, not the substitution of two athletes for two others (because the two other French male paddlers would remain in the Men's C2 500m race) - and we doubt whether the IOC Late Athlete Replacement Policy has any role to play here at all. Article 49 of the Olympic Charter rests the right of final acceptance of entries with the IOC. It is, in the Panel's view, the IOC to whom the CNOSF should by now have addressed its case. Again it left itself no room for manoeuvre, and if it has run out of time, it is the author of its own misfortune.
39. In summary, insofar as CNOSF may have had an entitlement under the ROUQP to unused quota places, it has made its claim too late. Insofar as CNOSF wished for an exercise of discretion in its favour, it has not established any error in the Jury verdict.

**The ad hoc Division of the Court of Arbitration for Sport dismisses this appeal.**