



**Arbitration CAS ad hoc Division (OG London) 12/004 Federación Española de Piragüismo (FEP) v. International Canoe Federation (ICF), award of 29 July 2012**

Panel: Ms Maidie Oliveau (USA), President; Mr Graeme Mew (Canada); Mr Guédél Ndiaye (Senegal)

*Canoe*

*Allocation of places*

*CAS jurisdiction*

*Time limit to appeal*

1. **The CAS ad hoc division's jurisdiction is subject to Art. 1 of the Ad Hoc Rules which provides that the dispute must arise during the Olympic Games or within the ten day period preceding the Opening Ceremonies of the Olympic Games and as set forth in Article 61.2 of the Olympic Charter, must be "on the occasion of, or in connection with, the Olympic Games". Where the facts clearly indicate that the dispute arose far earlier than the period specified in Art. 1 of the Ad Hoc Rules, the CAS ad hoc division has no jurisdiction to hear the dispute.**
2. **Art. 49 of the Code of Sports-Related Arbitration looks to the date the decision is received by the appellant to determine when an appeal must be filed. Under the Ad Hoc Rules, the Panel conducts a different analysis, and examines when the "dispute arose". Nevertheless, the Panel will look first to the date upon which the decision appealed against is received by the Applicant as well as the facts and circumstances from that date. The date the decision is received is the starting point for the analysis.**

The Applicant is the Spanish national federation for canoe kayak, Federación Española de Piragüismo.

The Respondent is the international federation for canoe kayak.

In August 2011 and again 8 June 2012, the Federación Española de Piragüismo (FEP, also the Applicant), claims to have requested of the Respondent that the place given up by Slovakia should have been assigned to the Spanish K2 1000m team of Javier Hernanz Agueria and Diego Cosgaya Noriega. In response to this request, the Respondent's Secretary General, Simon Toulson stated that *"the ICF's view is not the same"*. The 8 June 2012 was the second request to the Respondent, the receipt of which was acknowledged by the FEP as it quoted from the email in its application. There was no further correspondence on this subject.

On 30 June 2012, the Applicant claims that the Russian Canoe Federation posted online a list of athletes who would compete in various boats and events at the London 2012 Olympic Games, which

list differed from the list otherwise presented for the Games. The Applicant does not advise on what date the Russian Federation's list was presented or to whom, nor its exact contents.

On 6 July 2012, the FEP sent a request to the Respondent entitled "*Complaint quota places RUS*", seeking the place for K2 1000m that it claimed the Russian athletes Ilya Medvedev and Anton Ryahov should release to its athletes. On the same day, the Secretary General of the Respondent, Mr. Simon Toulson replied that the request was denied.

On 9 July 2012, the FEP disputed the decision of the Respondent with a supplemental email. On the same day, the Respondent's Secretary General responded, again rejecting the request with explanations.

On 10 July 2012, the FEP sent another email to the Respondent stating among others "*We firmly believe it is within our right to bring our K2 1000, but you are denying us that right. Therefore, with our Government's support as well as that of our Olympic Committee, we shall impart all the necessary legal actions in order to solve this situation, and even if we are denied to participate in the London Games, we shall follow the sport via till the TAS*" and again the Secretary General responded on 11 July reiterating its position in more detail.

On 12 July 2012, the FEP acknowledged receipt of the email of 11 July and again raised objections to the Respondent's position.

On 18 July 2012, the FEP corresponded again with the Respondent and the Respondent replied that the letter of Mr. Toulson of 11 July was the final response.

This application was filed on 28 July 2012 at 2:05pm with the CAS ad hoc Division, along with 10 exhibits. Applicant requested that the Panel grant relief as follows:

- Reassign two places in the 2012 London Olympic Games for K-2 1000m to the Spanish, Javier Hernanz Agueria and Diego Cosgaya Noriega so that they can enter and participate in that competition.
- Prohibit the Russian National Olympic Committee from presenting on 3 August 2012 for entry in the 2012 London Olympic Games the list it made public on 30 June or any other list which would displace or prevent the reassignment of a place in the K-2 to the Spanish, Javier Hernanz Agueria and Diego Cosgaya Noriega.
- Determine the manner in which the non-used places should be reassigned in accordance with the Rules of the Respondent and specifically to determine the manner in which the Slovakian K-2 1000m and the Russian K-2 1000m to which the application references should be reassigned, declaring the invalidity of those registrations which contravene the qualification system of the Respondent.

The Respondent provided the Panel with the French and English versions of its "*Qualification System – Games of the XXX Olympiad*" on 29 July 2012.

The Panel reviewed the application and the attached exhibits and has reached the decision set forth in this Award without a hearing, as provided in Art.15(c) of the Arbitration Rules for the Olympic Games (the “*Ad Hoc Rules*”).

## LAW

### Legal framework

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) on 14 October 2003. 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 art. 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 art. 7 of the CAS ad hoc Rules.
2. The jurisdiction of the CAS ad hoc Division arises out of the entry form signed by each and every participant in the Olympic Games as well as out of Rule 61 of the Olympic Charter.
3. Under art. 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*”.
4. According to art. 16 of the CAS ad hoc Rules, the Panel has “*full power to establish the facts on which the application is based*”.
5. According to art. 1 of the CAS ad hoc Rules, “*The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games*”.

### Merits of the application

6. The Panel must first determine whether it has jurisdiction to entertain the application. Art. 1 of the Ad Hoc Rules specifies that the dispute must arise within the ten day period preceding the Opening Ceremonies of the Olympic Games and as set forth in Article 61.2 of the Olympic Charter, must be “*on the occasion of, or in connection with, the Olympic Games*”.
7. The facts as set forth *supra* clearly indicate that the dispute arose far earlier than the period specified in Art. 1 of the Ad Hoc Rules. With respect to the Place Assignment claim, the “*dispute*

*arose*” shortly after the August competition in 2011 and at the latest, 8 June 2012 when the Applicant again objected to the process followed for the allocation of a place. Art. 49 of the Code of Sports-Related Arbitration looks to the date the decision is received by the appellant to determine when an appeal must be filed. Under the Ad Hoc Rules, the Panel conducts a different analysis, and examines when the *“dispute arose”*. Nevertheless, the Panel will look first to the date upon which the decision appealed against is received by the Applicant as well as the facts and circumstances from that date. The date the decision is received is the starting point for the analysis. In this case, it was clear, as the Applicant expressed its objections, starting in August 2011 and at the latest on 8 June 2012, that a dispute had arisen. This is not within the jurisdiction of the ad hoc Division.

8. With respect to the Russian Place claim, the decision made by the Respondent was communicated on 11 July 2012. Again, it had been earlier identified that there was a dispute with respect to the manner in which the Respondent interpreted its rules. In no event does this dispute fall within the time frame required by Art. 1 of the Ad Hoc Rules. The Applicant argues that its letter of 18 July 2012 to the Respondent brings the claim within the required time period, but as stated in CAS OG 12/002, *“The Panel is not saying that it is up to the athlete to decide when the issue arose, but rather that the facts will be examined in each case based on the good faith understanding of the athlete or other aggrieved party and the relevant facts giving rise to when the dispute arose”*. The Applicant had already identified its *“dispute”* by emails beginning with one on 6 July 2012, entitled *“Complaint quota places RUS”*, mentioned recourse to CAS on 10 July and received a response on 11 July 2012, all outside the dates required by Art. 1 of the Ad Hoc Rules. By repeating its complaint on 18 July 2012 (which the Applicant did not submit with its application), the Applicant did not bring the dispute within the time period required for this Panel to have jurisdiction over the dispute.

#### **The ad hoc Division of the Court of Arbitration for Sport rules:**

The Application is dismissed for lack of jurisdiction.