



Arbitration CAS ad hoc Division (OG PyeongChang) 18/006 Jeffrey Zina v. Lebanon Olympic Committee (LOC), award of 15 February 2018 (operative part of 14 February 2018)

Panel: Mr John Faylor (USA), President; Mrs Thi My Dung Nguyen (Vietnam); Prof. Martin Schimke (Germany)

Skiing (alpine skiing)

Selection for the Olympic Games

Exclusive authority of the National Olympic Committee

Discretion granted to the national federations

1. Pursuant to Rule 27.7.2 of the Olympic Charter (OC), a national Olympic committee has the exclusive right to *“send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter”*.
2. Rule 44.4 of the OC provides that an NOC shall only enter competitors upon the recommendations for entries given by national federations. The authority and discretion granted the national federations in making Olympic selections is broad and deep, and differs from country to country. Therefore, whatever improvement may be desirable, both in terms of the clarity of the rules and the exercise of decisional discretion, if the criteria for selection to the Olympic Winter Games were adequately published and the national federation acted within its authority without abusing its discretion, an athlete will not succeed in contesting his/her non-selection.

1 PARTIES

- 1.1 Jeffrey Zina (hereinafter: the “Applicant”) is a 19-years old Lebanese alpine skier who had not been selected by the Lebanese Olympic Committee to participate in the XXIII Olympic Winter Games in Pyeongchang.
- 1.2 The Respondent is the Lebanon Olympic Committee (hereinafter: the “LOC”). LOC is the National Olympic Committee of Lebanon. Pursuant to the Olympic Charter (OC), Chapter 4, Rule 27.7.2, the LOC has *“the right to send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter”*.
- 1.3 In his Application for arbitration to the Ad hoc Division of Court of Arbitration for Sport (“CAS”) for the XXIII Olympic Winter Games, the Applicant listed both the International Ski Federation (“FIS”) as an interested party and Mr. Allen Behlok as a potential adversely affected party to any decision which CAS may issue in this matter.

2 FACTS

- 2.1 The elements set out below are a summary of the relevant facts as established by the Panel based on the submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
- 2.2 The Applicant won the Lebanese Junior Championship (E1) in Alpine skiing for the 2009/2010 season and won the Lebanese Junior Championship (E2) for the 2012/2013 season. In the 2014/2015 and 2015/2016 seasons, he won the Lebanese Men's Alpine Skiing Championship.
- 2.3 Due to weather conditions, the Lebanese Ski Championship 2017 was conducted in two sessions over a period of three to four days each in January 2017 and in March 2017. During the first session in January 2017, the Applicant won the slalom event. During the second session, the Applicant sustained an injury to his lower back which hindered his further competitive performance and resulted in his taking 5th place in the Lebanese Ski Championship 2017.
- 2.4 Beginning in July 2017 and ending in January 2018, the Applicant and his coach planned and carried out an ambitious schedule of training and competitions on the international ski circuit.
- 2.5 On 5 September 2017, the LSF sent an email to the LOC, in which it informed the LOC regarding the names of the athletes, coaches and support personal that could potentially be nominated for participation in the Pyeongchang Winter Olympic Games 2018, subject to the athletes meeting FIS Point Requirements by the close of the rankings on 22 January 2018. The Applicant, although having missed out on the Lebanese Ski Championship, was listed together with Mr. Behlok on this short list.
- 2.6 On 22 January 2018, the FIS published its Points List for the Olympic Games which evidenced that the Applicant had achieved a total of 92.07 FIS points in the slalom and 127.14 FIS points in giant slalom competitions. On the same List, Mr Behlok had a total of 131.14 FIS points in slalom and 122.56 FIS points in giant slalom. The Applicant achieved the best overall ranking among Lebanese men on this FIS Points List, with Mr. Behlok ranking slightly better than the Applicant in the Giant Slalom and the Applicant ranking considerably better than Mr. Behlok in the Slalom.
- 2.7 By letter of the same date, the Lebanese Ski Federation (hereinafter the "LSF") informed the LOC that it had reviewed the Olympic FIS Points List and named the following persons for the Alpine Skiing events at the 2018 Winter Olympic Games: Allen Behlok and Naim Fenianos. The Applicant remained uninformed of this internal recommendation by the LSF to the LOC.
- 2.8 On 1 February 2018, the LOC officially notified the Applicant for the first time of its decision that it had selected Allen Behlok instead of himself as the male skier for Lebanon's sole allocated male slot in the 2018 Winter Games (hereinafter the "Challenged Decision").

2.9 In the same notification submitted in translation by the Applicant's sworn translator, the LOC stated that

"it is worth to mention that the Lebanese Olympic Committee, in order to give room for the possibility of your participation in this sport event, has requested from the International Federation of Snow Ski and the organizing committee of the winter Olympic 23rd tournament PyeongChang 2018 to add your participation in the Alpine Ski".

3 CAS PROCEEDINGS

3.1 The Applicant's Memorandum in Support of Application for Arbitration was received by the CAS Ad hoc Division on 13 February 2018 at 10:20am (Pyeongchang time). It contained the following request for relief:

- i. Annul the decision of the Lebanese Olympic Committee, dated 1 February 2018, not to select the Applicant as the male skier to fill the sole quota slot allocated to Lebanon by the FIS for the Alpine Skiing events at the 2018 PyeongChang Winter Games; and*
- ii. Declare the Applicant selected as the male alpine skier to fill the sole quota slot allocated to Lebanon for the Alpine Skiing events at the 2018 Winter Games, or, in the alternative, order the Lebanese Olympic Committee to designate the Applicant as the male alpine skier to fill the sole quota slot allocated to Lebanon for the Alpine Skiing events at the 2018 Winter Games, and to do so without delay in a time frame that will allow the applicant to take part in the Alpine Skiing Events for which he is qualified (namely, the Giant Slalom and Slalom), and*
- iii. Order the NOC to place the Applicant in the Olympic Team of Lebanon and to make all arrangements necessary to enable the Applicant to represent Lebanon in the Giant Slalom and Slalom Alpine Skiing Events at the 2018 Winter Games; and*
- iv. Grant any other relief that the Arbitral Tribunal shall find just and appropriate".*

3.2 The Respondent and the Interested Parties were notified of the Application at 12:35pm on the same day. The Respondent was granted a deadline of 9:00pm to respond to the Application.

3.3 Later on the same date, at 1.24 pm (Pyeongchang time), the CAS Ad Hoc Division notified the Parties of the following composition of the Panel:

- Mr John Faylor (German), President
- Ms Thi My Dung Nguen (Vietnam), as arbitrator
- Mr Martin Schimke (German), as arbitrator

3.4 The Ad hoc Division then issued at 2.30pm on 13 February 2018 to the Applicant, the Respondent, the IOC and Mr. Behlok a summons to appear in a hearing to be held at the Offices of the CAS Ad hoc Division, Tower Condominium, 715 Olympic-ro, Daegwalnyeong-

myeon, Pyeongchang-gun- Gangwon-do, South Korea on the following day, 14 February 2018, at 8:00am (Pyeongchang time).

- 3.5 The Respondent submitted its response within the time limit at 8:45pm on 13 February 2018 in the form of a “*clarification*” of the facts and events alleged in the Applicant’s Memorandum. Upon request of the CAS Ad Hoc Division, the Respondent then submitted at 02:45am (Pyeongchang time) on 14 February 2018 a translation of additional documents originally filed in Arabic language.
- 3.6 Appearing at the hearing in person were Attorney Roland Ziadé for the Appellant and Mr Jean Hammam, President of the LOC in the accompaniment of the General Secretary of the LOC, Mr Hassan Rustom, Mr Raymond Succar, Chef de Mission, and various other representatives from the LSF, Mr Youssef Khalil and Mr Selim Keyriuz. The Applicant attended the hearing by way of teleconferencing (Skype). The witnesses named by the Applicant, Mr. Marek Garaz and Mr. Elie Younes were likewise heard by means of teleconferencing (Skype).
- 3.7 Neither the FIS nor Mr. Behloc issued written statements to the Panel nor did they appear at the hearing.
- 3.8 At the outset of the hearing, the Parties confirmed that they had no objection to the composition of the Panel. At the conclusion of the hearing, in response to the President of the Panel’s query, each party affirmed that it had no objections to the course of the proceedings and that they had no additional matters or requests which they wished to raise.
- 3.9 On 14 February 2018 at 02:31 pm (time of Pyeongchang), the Panel issued the operative part of the award, which was notified to the Parties.

4 PARTIES’ SUBMISSIONS

- 4.1 The Parties’ submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered.

A. The Applicant’s Submissions

- 4.2 The Applicant takes the position that the LOC’s decision not to select him for the XXIII Winter Olympic Games is irregular and stands in blatant contradiction with representations made to him by the LOC since March 2017, upon which he relied, to the effect that the LOC’s decision would be based exclusively on the Olympic FIS Points List and the FIS qualification system for the XXIII Winter Olympic Games. Rather than on any other criteria or rules.
- 4.3 In addition, the Applicant asserts that the decision is “improper, arbitrary and unjust”. It emerged from a “non-transparent and very questionable process during the second half of January 2018, a two week period during which the LOC failed to communicate with the

Applicant or to reply in any way to repeated inquiries that he made after the Olympic FIS Points List as at 22 January 2018 confirmed his highest ranking standing”.

- 4.4 The wrongfulness of the decision is further demonstrated in the extraordinary statement in the notification of 1 February 2018 that, although the LOC had chosen Mr. Behlok for the sole allocated slot, it informed the Applicant that it was requesting the FIS and the XXIII Winter Olympic Games Organizing Committee to allocate an extra quota slot to Lebanon so that the Applicant would also be able to compete in the Olympic Games.
- 4.5 Throughout the 2017-2018 season, the Applicant emphasizes that he kept the LSF advised of the ski competitions in which he was participating.
- 4.6 During these months, the Applicant’s coach, Mr Marek Garaz, consulted on several occasions with both the LOC and the LSF whether the relevant criteria to be applied to the selection of the Alpine skiers for the 2018 Winter Olympic Games had been determined.
- 4.7 The Applicant vehemently denied in the hearing that he ever received any information from either the LOC or the LSF regarding the governing criteria for the selection of the XXIII Winter Olympic Games delegation. For this reason, he assumed that the Olympic FIS Points List would be the deciding factor, this also being the reason why he focused his energies and concentration to international competition in the period between July 2017 and January 2018.
- 4.8 In early March 2017, Mr Garaj in the accompaniment of the Applicant’s mother visited Mr George Zeiden, a Vice-President of the LOC, in Lebanon to inquire about the criteria which would apply to the selection process. Mr Zeiden confirmed that the selection would be exclusively based on the Olympic FIS Points List and the FIS’ qualification system for the XXIII Winter Olympic Games.
- 4.9 Based upon these representations, he and his coach embarked upon an *“ambitious schedule of training and competitions between July 2017 and January 2018”*. During this period, he kept the LSF advised of the ski competitions in which he was participating.
- 4.10 The Applicant submits that, having recovered fully from his injury, it was his intention to compete in the international ski circuit with the goal of
“(i) garnering sufficient FIS Points to qualify for the 2018 Winter Games and (ii) gaining selection by the NOC by becoming the highest ranked Lebanese male Alpine skier on the Olympic FIS Points List”.
- 4.11 While being disappointed that the injury had hindered him from winning the Lebanese Championship again in 2017, the Applicant *“understood from the NOC that his results in the Lebanese Ski Championship would not stand in the way of being selected to Lebanon at the XXIII Winter Olympic Games”*.
- 4.12 The Applicant points out in this regard that not letting the Lebanese Championship disappointment not get in the way of his Olympia chances *“was also consistent with what the Applicant knew the NOC had done in the past where athletes were selected to represent Lebanon based on their*

international ranking and not based on their performance in Lebanon's own national championship". This had been the case for past Lebanese athletes.

- 4.13 The Applicant's expectations were further enhanced in September 2017 by the LSF's inclusion on the "Shortlist" sent to the LOC. This list named the Lebanese athletes who could "potentially participate" in the XXIII Winter Olympic Games (subject to meeting the required FIS points).
- 4.14 The Applicant indicates that he first learned of the possibility that other criteria could play a role in the selection process from a friend at the LSF awards ceremony during the summer of 2017. A representative of the LSF had said that Lebanon would send one of the skiers who had been in the top three of the 207 Lebanese Ski Championship. The Applicant discounted this rumour as standing in conflict with the reliable information given by Mr Zeidan to his coach and his mother in March of that year.
- 4.15 While further pursuing his goal of garnering sufficient FIS points to ensure his selection for the Games, he engaged his attorney, Mr Elie Younes, to consult with the LOC regarding its selection decision. Mr Younes managed to speak with Mr Tony Khoury by telephone on 8 December 2017 regarding the selection process. Mr Khoury confirmed that the LOC's selection decision would be based solely on the FIS Points and any other international rule/standards and that no national criteria/rules would prevail.
- 4.16 Based upon the above representations and thanks to his excellent performance in international competition in the summer and fall 2017, the Applicant fulfilled the FIS's qualification requirement for the XXIII Winter Olympic Games and he achieved the highest-ranking position on the Olympic FIS Points List among all Lebanese male skiers.
- 4.17 The Applicant submits that despite hearing rumours during this period that the LOC was going to select Mr. Behlok, not him, he fully expected that the LOC would appoint him to Lebanon's Olympic Team for the XXIII Winter Olympic Games.
- 4.18 Concerned about these rumours, he finally wrote to the President of the LOC on 17 List would be published on 22 January 2018) and requesting that the LOC properly carry out the selection process.
- 4.19 Upon receiving FIS Points List on 22 January 2018, the Appellant sent a copy to the LOC President on 23 January 2018. After receiving no reply, he penned another letter to the LOC on 25 January 2018, this time also addressing the letter to the LSF. He expressed his concern that the rumour he January 2018, emphasizing his highest-ranking status on the FIS Points List (once that had been hearing could be true and renewed his request for confirmation that he would be appointed to represent Lebanon at the Winter Olympic Games.
- 4.20 On 26 January 2018, the Applicant finally received a reply from the LSF which stated that the LSF was bound by the FIS' requirements in making recommendations to the LOC and that the LOC was responsible for selecting the athletes who would represent Lebanon at the XXIII

Winter Olympic Games. In this letter, the LSF made no reference to nor provided any information about any other criteria that it might have applied or would apply in making any recommendations to the LOC.

- 4.21 Although the Applicant immediately sent a copy of the 26 January reply of the LSF to the LOC and requested confirmation of a decision in his favour. He was aware, however, that the deadline for the NOC to submit the names of athletes select for the 2018 Winter Olympic Games was midnight of 28 January 2018. When the deadline expired, he still had heard nothing. Attempts to obtain information directly from FIS resulted in the response that only the LOC could provide this information.
- 4.22 The Applicant first learned of the confirmation of Mr Behlok in the LOC letter of 1 February 2018. The Applicant asserts that this was the first mention to him by either the NOC or the LSF of such a nomination having been made by the LSF on 22 January. Moreover, the LSF letter to him of 26 January 2018 made no reference to its letter to the LOC with the nominations dated 22 January 2018.
- 4.23 The Applicant criticizes the brief notification by the LOC in its 1 February letter for giving no explanation whatsoever of its decision to accept the contradiction with the approach that the LOC had previously stated it would follow, no less as with prevailing international practice.
- 4.24 The intransparency of the LOC's decisional process, as further submitted by the Applicant in the course of the hearing, is impressively shown in the seizure of certain documents of the LOC by order of a Lebanese judge on 30 January 2018. In the course of the seizure, the President of the LOC declared on this date *"that nobody was appointed to represent Lebanon in the Next Winter Olympic Games and a meeting will be held on February 1st, 2018 to take the relative decision"*. Such a declaration stands in obvious contradiction to the fact that the LOC had already notified the FIS and the Organizing Committee of its decision already on 28 January 2018.

B. The Respondent's Submissions

- 4.25 The Respondent explained in the hearing the process of nomination and selection done by the LSF which led to the decision of 1 February 2018.
- 4.26 On 28 December 2016, the LSF claims to have issued a written circular (the "Circular") to all "Clubs, teams and athletes" which set out the criteria which would apply to selecting the Lebanese delegations during the 2017 competitions at the World Championship, Winter Asian Olympics, Junior World the Championship, the Lebanese Championship and the 2018 Winter Olympic Games.
- 4.27 The English translated copy of the Circular (in Arabic) from December 2016 submitted by the Respondent together with his e-mail response on 13 February 2018 is signed by both the President and General Secretary and states with regard to the 2018 Winter Olympic Games:

"Qualification of the Winter Olympic Games 2018

Each man and woman who will participate in the Winter Olympic Games 2018 must obtain the points that will allow him to participate in the Giant Slalom and slalom competitions according to the qualification of the International Olympic Committee and must have the best ranking in the Lebanese Championship in 2017 (the player must be ranked between the top three players). In no case was qualified in the total of the giant slalom and slalom competitions, the qualified player in one of them who have made the best result in the Lebanese Championship will be nominated (the top three)” (sic).

- 5.4 The Respondent, represented in the hearing by its President, Mr Hammam, further submits that the FIS informed the Applicant in response to his inquiry of 22 January 2018 that *“it is the prerogative of each NOC to decide on [its] own criteria for the selection of athletes to their team/s. This is not defined in the FIS regulations. For example many leading nations will use the FIS World Cup standings”*.
- 5.5 The Respondent vehemently contests that the Applicant was not or could not have been aware of the local criteria, meaning the *“top three”* requirement regarding the 2017 Lebanese Championship, with regard to the selection of participants in the 2018 Winter Olympic Games. Not only was he sent the Circular of 28 December 2016, but his Club was also informed of these additional criteria. This was common discussion among Lebanese athletes. The Applicant participated in 11 Lebanese skiing events in 2017. It was impossible for him not to have been informed of the governing criteria.
- 5.6 The Respondent responded in the hearing to the representations made by Mr Zaiden in the March 2017 meeting of the Applicant’s coach and mother. The President of the Respondent indicated that this could have just been an informal meeting in which Mr Zaiden carelessly omitted to mention the local criteria. In any event, the Respondent contests that Mr. Zaiden ever made such a statement that only the FIS Points List would be determinative.
- 5.7 The President of the Respondent also referred to a meeting in Lebanon with the Applicant on or about 14/15 January 2018. Attending this meeting was also the Secretary General of the Respondent. At this meeting, the President of the Respondent claims to have explained the workings of both the FIS Points List and the local criteria governing the results of the Lebanese Championship 2017 to the Applicant.
- 5.8 The President also claims to have informed the Applicant in this meeting that an official decision regarding the Olympic selection could be made only after 22 January 2018, the cut-off date for the calculation of the FIS Points List. In addition, the President emphasized in this meeting that the LOC could notify the names of the nominated skiers to FIS and the IOC only after having received the recommendations of the LSF.
- 5.9 The recommendation of the LSF, which was received by the LOC in a letter dated 22 January 2018, contained only the name of Allen Behlok as the athlete to represent Lebanon in the Winter Games in the only male slot assigned to the LOC by the Organizing Committee. This selection was based on the criteria set by the LSF and approved by the LOC. Mr Behlok had

scored the required points pursuant to the Olympic FIS Point List and being ranked in 1st Place in the 2017 Lebanese Championship.

- 5.10 Despite the LSF recommendation not having contained the name of the Applicant, the Respondent, acting on its own authority and being impressed by the display of “*young talent with a bright future*”, decided to request an additional male slot from both the FIS and the Organising Committee. In so doing, it wished to recognize the achievements of the Applicant. Regrettably, these requests were denied by the FIS and the Organising Committee.
- 5.11 In light of the above, the Respondent made clear to the Panel that the Applicant’s Prayer for Relief was without grounds and should be dismissed.

5 JURISDICTION

- 5.1 Article 61.2 of the Olympic Charter provides as follows:

“61 Dispute Resolution

[...]

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

- 5.2 Article 1 of the CAS Arbitration Rules for the Olympic Games (hereinafter: the “CAS Ad Hoc Rules”) provides as follows:

“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

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.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective”.

- 5.3 The CAS Ad Hoc Division is granted jurisdiction only if an application concerns disputes which “*arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games*”.

- 5.4 At the beginning of the hearing, all the Parties expressly accepted the jurisdiction of the CAS Ad Hoc Division.
- 5.5 In view of the above, the Panel determines that the CAS Ad Hoc Division has jurisdiction to deal with the present application.

6 THE MERITS

- 6.1 The Panel views the issue of the Applicant's knowledge of the governing criteria for selection to the XXIII Olympic Winter Games as being the central issue of this dispute. These criteria were determined by the LSF and should have been communicated to the LSF member clubs and associations, teams and athletes.
- 6.2 Whether the Circular dated 28 December 2016 ever reached the hands of the Applicant and whether the LSF was obligated to formally notify each and every member athlete of the criteria as one would notify a judicial document can, in the opinion of the Panel, be set aside in this dispute.
- 6.3 The Panel is convinced that the Applicant had knowledge very early in 2017 that two, not one, criteria would determine the selection to the XXIII Olympic Winter Games, namely achieving the specified point thresholds in the FIS qualification system and achieving the position of one of the "top three" skiers in the 2017 Lebanese Championship.
- 6.4 In this regard, the Panel cites the confirmation provided by the President of the Applicant's club in the hearing that the criteria for selection to the Olympic Winter Games was published in various public websites, in particular, Facebook. The latter, without challenge by the Applicant, also stated that the Circular of 28 December 2016 announcing the criteria was indeed made available to all athletes, teams and clubs.
- 6.5 If the Applicant resided mostly in London, as he claimed, a considerable distance from his home club in Lebanon, it remains his duty to keep himself informed of announcements from the club and the LSF regarding the competition agenda. Moreover, the fact that he participated in 11 competitions for the Lebanese Championship makes it unlikely that he was not informed of the governing criteria.
- 6.6 The Applicant sustained, to his great misfortune, a back injury during the 2017 Championship, one which hindered his performance and resulted in his taking 5th place in the competition. It is clear to the Panel that his misfortune constituted a major set-back for the Olympic directed Applicant, one which caused him great concern in the remaining months of that year.
- 6.7 It is therefore understandable that, with the Applicant being unable to claim one of the "top three" positions in the Championship, he would concentrate upon becoming "*the highest-ranking Lebanese Alpine skier in the Olympic FIS Points List*" to qualify for selection to the 2018 Winter Games. His intention was to so impress the LSF and LOC with his international performance that the selection committees would have no other alternative than to select him.

6.8 This strategy is clearly set out in Pt. 22 of the Applicant’s Memorandum where he states:

“He [the Applicant] fully recovered from the injury within weeks and resumed training, with the intention of competing on the international ski circuit and the goals of (i) garnering sufficient FIS Points to qualify for the 2018 Winter Games and (ii) gaining selection by the NOC by becoming the highest ranked Lebanese male Alpine skier on the Olympic FIS Points List. While disappointed that the injury had hindered him from winning the Lebanese Championship again, the Applicant understood from the NOC that his results in the Lebanese Ski Championship would not stand in the way of being selected to represent Lebanon at the 2018 Winter Games”.

6.9 The Applicant’s strategy to impress the LSF/LOC selection process with high performance in the year’s remaining international competition was reinforced by the knowledge that this process had made exceptions in the past, namely in the case of the male Alpine skier Ghassan Achi who represented Lebanon in the 2010 Olympic Winter Games and the female Alpine skier Sonia Georges who represented Lebanon in the 2016 Youth Olympics. If exceptions could be made in these cases, why not in his own?

6.10 What the Applicant overlooked, and perhaps did not understand, is the nature of the LSF/LOC selection process and the authority which is assigned to each of these organisations with regard to the selection under governing IOC rules.

6.11 Pursuant to Rule 27.7.2 of the Olympic Charter (OC), a national Olympic committee such as the LOC has the exclusive right to “send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter”.

6.12 On the basis of past CAS jurisprudence, there can be no issue that it lies within the authority of an NOC to select its competitors for the Olympics. No other person with a member country has that right to do this (see CAS OG 08/003 and CAS OG 14/001).

6.13 Rule 44.4 of the OC provides that: “[a]n NOC shall only enter competitors upon the recommendations for entries given by national federations. If the NOC approves thereof, it shall transmit such entries to the OCOG. The OCOG must acknowledge their receipt. NOCs must investigate the validity of the entries proposed by the national federations and ensure that no one has been excluded for racial, religious or political reasons or by reason of other forms of discrimination”.

6.14 The authority and discretion granted the national federations in making Olympic selections is broad and deep. The exercise of the federations’ discretion differs from country to country. In the year 2000 a Japanese freestyle swimmer won the national championship. Her performance lay under the FINA “A” time requirement. Despite this achievement, she was not nominated for the Olympic Games. The CAS Panel dismissed the swimmer’s appeal in that year on the grounds that the national federation, followed by the Japanese NOC, properly exercised its discretion (CAS 2000/A/278).

6.15 The particularity of that CAS decision can be seen in the fact that the Japanese federation had adopted, practically speaking, and almost no nomination criteria at all. The only guideline which

existed and was so published stated: *“Athletes shall be selected from those who have the competitive capability to meet the expectations of the Japanese people, are qualified by the IF to compete and also are expected to achieve satisfactory results”*.

- 6.16 In the case at hand, the Applicant raised no challenge to the authenticity of the circular dated 28 December 2016. He disputed only the fact that he had received a copy of it. In the view of the Panel, the Applicant was indeed aware of the content of the circular. The fact that the Applicant, after sustaining his injury, was concerned that his poor performance in the Lebanese Championship might affect his Olympic chances was evidenced clearly in the visit of his coach and mother with Mr. Zeiden in March 2018, shortly after the accident.
- 6.17 Having to live with his 5th place in the Lebanese Championship, the only hope for the Applicant to participate in the XXIII Olympic Winter Games was to develop a training and competition schedule which, as he impressively points out in his Application, would allow him to plead before the LSF/LOC that an exception should be made in his case, exceptions having been made in the cases of Ghassan Achi and Sonia Georges.
- 6.18 The Panel renders no judgement with regard to the truth and accuracy of the Applicant’s allegations regarding the statements and promises made in the various meetings and telephone conversations or by rumour from skiers whom the Applicant might have met on the slopes during 2017.
- 6.19 The Panel wishes to note, however, that it is troubled by the fact that the Applicant neglected to mention in his pleadings his meeting on or about 14/15 January 2018 with the President and Secretary General of the Respondent. At this meeting, the President alleges to have clearly and categorically informed him about the selection criteria, both international and local, and the workings of the selection process. This was disputed by the Applicant at the hearing.
- 6.20 It is quite possible that careless statements were made and ungrounded expectations were awakened during these various meetings and conversations. If the Applicant relied on these expectations and thereby sustained financial damage, other legal ways and means to compensate such wrongdoing are available to him in other courts of law.
- 6.21 The Panel has also noted that the LSF and LOC responses to his various letters and inquiries following the reporting of the LSF’s recommendations to the LOC may have been inconsiderate and evasive.
- 6.22 Moreover, the intransparency of the selection process within the LSF and LOC may indeed be indicated by the contradictory facts and statements made the President of the Respondent in conjunction with the seizure of LOC documents on 30 January 2018 and the fact that the LOC’s nominations were already reported to the FIS and IOC on 28 January 2018. However, it is not the task of this ad hoc Panel to render judgement on these issues. Lacking information on the facts and circumstances surrounding this occurrence, any opinion, much less a judgement, would be based on pure speculation.

- 6.23 The Panel holds therefore that the decision of the LOC which deprived the Applicant of his chance to compete in the XXIII Olympic Winter Games must stand. The LSF acted within its authority without abusing its discretion.
- 6.24 The Panel attaches no meaning or significance to the attempt of the LOC to obtain an additional male slot to enable the Applicant to attend the Games. The LOC acted on its own authority, perhaps as a gesture of compensation for the Applicant's understandable disappointment.
- 6.25 It is indeed arguable that the selection process within the LSF/LOC organisations is in need of improvement, both in terms of the clarity of their respective rules and the exercise of their decisional discretion. However, in light of the authority and discretion accorded the national federations and the NOCs by the Olympic Charter, as confirmed by the past jurisprudence of CAS, the Panel reluctantly arrives at no other conclusion than to dismiss the Applicant's request for relief.

7 OVERALL CONCLUSION

- 7.1 The Application filed by the Applicant against the Respondent is dismissed and its decision is hereby confirmed.

8 COSTS

- 8.1 According to Art. 22 para. 2 of the CAS Ad Hoc Rules, Parties to CAS Ad Hoc proceedings "*shall pay their own costs of legal representation, experts, witnesses and interpreters*". *In casu*, the Panel does not see any reason to deviate from such rule.

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

The application filed by Jeffrey Zina on 13 February 2018 is dismissed.