



**Arbitration CAS ad hoc Division (OG Athens) 04/001 Russian Olympic Committee (RNOC) v. Fédération Equestre Internationale (FEI), award of 21 August 2004**

Panel: The Hon. Michael Beloff QC (United Kingdom), President; The Hon. Justice Deon van Zyl (South Africa); Mr Pantelis Dedes (Greece)

*Equestrian (Dressage)*  
*Allocation of unused quota positions*  
*Interpretation of the FEI regulations*

**The interpretation of the FEI Regulations, as indeed of the rules of any sporting body, is a question of law. While it is always necessary to seek a purposive and contextual construction of such rules so as to discern their true intent and effect, a body cannot impose by discussion or decision after the coming into force of the rules, a meaning which they do not otherwise bear. While in practice the FEI (or any other body in similar circumstances) must form an initial view as to the meaning of its rules, it is the adjudicating body which is vested with the function of finally determining that meaning, subject only to any recourse (if any) to the Swiss Federal Tribunal.**

This is an appeal by the Applicant, the Russian Olympic Committee (RNOC) against the decision of the Respondent, the Fédération Equestre Internationale (FEI) made by its Secretary General (SG) on 11 August 2004 refusing to allocate a second individual Dressage qualification to a Russian rider.

On 21 July 2004, the FEI issued the updated List of Definite Entries for Dressage for the 2004 Olympic Games. Pursuant to the waiver by two NOCs (Finland and Israel) of their places in the Olympic Dressage Competitions, riders from those two countries were replaced by the FEI with second riders from Australia and France.

On 9 August 2004, the Russian Equestrian Federation (REF) applied to FEI to reserve a position in the Olympic Dressage Individual Competitions for the Russian rider Alexandra Korelova (the “REF letter”).

On 11 August 2004, Dr. Bo Helander, SG of the FEI, replied to the REF that it was impossible to assemble the FEI Judicial Committee or the FEI Executive Board in order to decide on the REF’s application. In these circumstances he had studied it himself and decided to reject it (the “FEI letter”).

## 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 (the “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 Articles 4.1, 31 and 74 of the Olympic Charter and over IFs by reason of Articles 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 Article 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).
3. The dispute has arisen during a period of ten days preceding the Opening Ceremony of the Olympic Games as required by Article 1 of the CAS ad hoc Rules.
4. The RNOC 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.
5. 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*”.
6. 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*”.
7. The applicable regulations are FEI Regulations for Equestrian Events at the Olympic Games, 21<sup>st</sup> Edition, effective for the Games of the 2004 Athens Olympic Games (“the Regulations”), whose relevant articles are set out below.
8. Article 605 provides so far as material as follows:

### *QUOTA*

#### *1. Total quota*

*Two hundred (200) riders will be eligible and allowed to participate at the 2004 Olympic Games, and 215 horses will be allowed to enter the Olympic stables as follows:*

##### *1.1 Jumping (...)*

##### *1.2 Dressage: 50 riders and 50 horses*

*A maximum number of 4 riders per NF are allowed to enter the Olympic competitions.*

1.3 *Eventing ...*

2. *NFs Qualified with Individuals only*

*... ten (10) spaces for Dressage will be reserved for NFs not represented by a team, each competitor with 1 horse each; a maximum of 2 riders per nation not represented by a team will be qualified to take part for individual classification.*

9. Article 608 provides, so far as material, as follows:

*FILL-UP OF QUOTA*

*If a qualified nation finds itself unable to compete in the Team or in the Individual Competitions after the nominated entries of 30 June 2004, it must inform the FEI immediately, in order to provide the opportunity to other nations to participate.*

*The fill-up of quota of additional Teams and Individuals may only be made in accordance with the procedure laid down for each discipline, provided that the total quota of permitted horses and riders per discipline is not exceeded (see Art. 605, point 1 above).*

*Replacement of Team and/or Individuals ...*

*NFs qualified with Individuals only*

*Fifteen (15) spaces for Jumping and 10 spaces for Dressage are reserved for NFs not represented by a team, each competitor with 1 horse each; a maximum of 2 riders per nation, not represented by a team, will be qualified to participate in individual competition.*

10. Article 624 provides, so far as material,

2. *DRESSAGE INDIVIDUAL QUALIFICATION*

*Ten (10) spaces will be reserved for NOC/NFs not represented by a team, with a maximum of 2 riders and 2 horses qualified per NOC.*

A. *The host nation will be qualified with 1 individual;  
it not otherwise qualified (GRE)*

B. *The NOC/NF of the best placed individual at the  
2002 WEG in the Grand Prix (Team Competition) (1)*

C. *The NOC/NF of the best placed Individual Grand Prix  
(Team Competition) from 2003 "Open" European Championship  
from a nation not yet qualified through the 2002 WEG (1)*

D. *The NOC/NF (not yet qualified through WEG 2002 or the  
2003 "Open" European Championship) of the 3 best placed riders  
from the FEI approved World Dressage Riders Ranking list of 1 May 2004 (3)*

- E. *Spaces will be reserved for NOC/NFs participating in the 2003 FEI World Dressage Challenge. The best rider/horse combination from each of the following four regions will qualify their NOC for 1 place:*
1. *Europe & Central Asia (FEI Olympic Groups A, B, C),*
  2. *Europe North and South America (FEI Olympic Groups D, E)*
  3. *South East Asia & Oceania (FEI Olympic Group G)*
  4. *Africa/Middle East (FEI Olympic Group F) (4)*
- F. *In accordance with the specifications noted under the heading 'Tripartite Commission (IOC-ANOC-FEI) Invitation places', Invitation places may be distributed to NOCs if confirmed by the Tripartite Commission (+)*
- TOTAL: 10

### 3. DRESSAGE RIDERS RANKING LIST

*See FEI Bulletin 6/2002 and 1/2003 for the point system to be used for establishing the FEI approved World Dressage Riders Ranking list. The World Dressage Riders ranking list covering the period of 1<sup>st</sup> January 2003 to 1<sup>st</sup> May 2004 will be used to determine respective qualification. The list is limited to the 10 best results per rider in events within the identified period.*

### 4. REALLOCATION OF UNUSED QUOTA POSITIONS

...

*Unused individual positions: in case an NOC does not use a qualified quota position, the next highest placed NOC will be taken from the FEI approved World Ranking List for Dressage Riders of 1 May 2004. The same rider cannot qualify an NF for more than one individual place.*

[We were told that the last sentence of the postscript was intended to apply generally to Article 624.2-4 and not to the postscript only].

11. Although Article 624.2 deals with Dressage Individual Qualification, the 10 places are allocated to NOCs/NFs. This is the constant theme of the provision, introduced in its preface and repeated in B, C and D. Furthermore, a maximum of 2 riders and 2 horses is made mandatory by the introduction to Article 624.2.
12. The criteria for qualification listed in Article 624.2.B-E are all alternative, the one to the other, and in an orderly descending sequence. An NOC which qualified under B is likely to be stronger in the sport than one which qualified under C, and so on. We have been told that the Regulations exemplify a tension between the two desiderata of quality and diversity.

13. In consequence, if an NOC/NF has qualified for allocation of a place to one of its riders under Article 624.2. B and C, such NOC cannot qualify for allocation of a place under Article 624.2 D. This is the effect of the parentheses “(not yet qualified through WEG 2003 or the 2003 “Open” European Championships)”.
14. In order to qualify under Article 624.2 D, an NOC/NF has to have within its particular jurisdiction one of the three best placed riders from the FEI approved World Dressage Ranking list of 1 May 2004 (“the list”). That ranking list is itself defined in Article 624.3.
15. Article 624.3 does not appear to us to contemplate two distinct ranking lists: one – a limited – version, excluding riders of nations already qualified for the Olympics, for the purpose of Article 624.2 D (or any other purpose), and another including such riders. The list described in Article 624.3 and referred to in Article 624.2 D and 624.4 is “the World Dressage Riders ranking list covering the period 1 January 2003 to 1 May 2004”. As specified in Article 624.3 “the list is limited to the 10 best results per rider in events within the identified period” [points for such results are calculated in accordance with FEI Bulletin 6/2002 and 1/2003]. But the ranking list must properly contain all riders from whatever NOC/NF, and whether the NOC either has qualified to take part as a team or has qualified via the Article 624.2 A, B or C routes. FEI approval cannot validate a list which lacks those criteria.
16. It is common ground that riders in such a ranking list in NOC/NFs which have qualified either in a team or via the Article 624.2 A, B or C routes cannot qualify their NOCs/NFs under Article 624.2 D but it is not the content of the ranking list, but substantive provisions which generate such a result. Article 624.2 generally is only concerned with riders of NOCs/NFs which have not qualified as a team. Article 624.2 D specifically does not apply to NOCs/NFs which have qualified through WEG 2002 or the 2003 “Open European Championship”.
17. If an NOC/NF does not qualify for an allocation under Article 624.2 B, C, D or E, there is another route potentially open to it. If another NOC which has a qualified quota position under any such provision does not make use of it, then the next highest placed NOC will be taken from the list [See Article 624.4 “Unused individual positions”] (“the postscript”).
18. The postscript requires only that the list is scrutinized for the “next highest placed NOC” identifying such NOC by reference to the rider in such NOC which is next placed in the list. The only limitations contemplated are, first, that such rider must not be in an NOC represented by a team and, secondly, that the next highest placed NOC must not under Article 624.4 gain more than two places.
19. The FEI letter mentions “Discussions and decisions during April 2004 referring to the interpretation of Article 624.2”. The Panel must emphasise, for the avoidance of doubt, that the interpretation of the FEI Regulations, as indeed of the rules of any sporting body, is a question of law. While it is always necessary to seek a purposive and contextual construction of such rules so as to discern their true intent and effect, a body cannot impose by discussion or decision after the coming into force of the rules, a meaning which they do not otherwise bear. The Panel must add that while in practice the FEI (or any other body in similar circumstances) must form an initial view

as to the meaning of its rules, it is the Panel which is vested with the function of finally determining that meaning, subject only to any recourse (if any) to the Swiss Federal Tribunal (see Article 21 of the ad hoc Rules).

20. The FEI Olympic Ranking – Dressage – based on calculation of FEI/BCM Dressage Rider’s World ranking list (from 1.1.2003 to 2.5.2005) (“the so-called short-cut version”) contained the following names

<b>Rank</b>	<b>*</b>	<b>Rider</b>	<b>**</b>	<b>NF</b>	<b>Total points</b>
18	P	Kyra Kyrklund	10	FIN	73.022
35	P	Julia Chevanne Gimel	10	FRA	70.795
41	P	Iryna Lis	10	BUL	70.050
42	P	Ricky MacMillan	10	AUS	70.008
48	P	Mary Hanna	10	AUS	69.179
191	P	Oded Shimoni	6	ISR	39.292

It is expressly stated “Riders of Nations already qualified are not included”.

21. The FEI list of qualified nations dated 2 May 2004 provided, so far as material, as follows:

*Individual Qualification System*

*10 spaces will be reserved for NOCs not represented by a team, with a maximum of 2 riders and 2 horses qualified per NOC*

1.	<i>The host nation will be qualified with 1 individual, if not otherwise qualified</i>	GRE (1)	
2.	<i>The NOC of the best placed individual at the 2002 WEG in the Team Competition (Grand Prix)</i>	RUS (2)	
3.	<i>The NOC of the best placed individual in the Team Competition (Grand Prix) from the 2003 “Open” European Championship (Hickstead GBR, August 2003) from a nation not yet qualified through the 2002 WEG</i>	IRL (3)	
4.	<i>The NOC (not yet qualified through WEG 2002 or the 2003 “Open” European Championship, Hickstead GBR, August 2003) of the 3 best placed riders from the FEI approved World Dressage Riders Ranking list on <b>1 May 2004</b></i>	FIN (4) FRA (5) BLR (6)	<sup>1</sup> <sup>2</sup> <sup>3</sup>
5.	<i>4 spaces will be reserved for NOCs participating in the 2003 FEI World Dressage Challenge finalized <b>1 May 2004</b>. The best rider/ horse combination from each of the following four regions will qualify their NOC for 1 place</i> 1. <i>Europe (FEI Olympic Groups A, B, C)</i> 2. <i>North and South America (FEI Olympic Groups D, E)</i> 3. <i>South East Asia (FEI Olympic Group G)</i> 4. <i>Africa/Middle East (FEI Olympic Group F)</i>	ISR (7) COL (8) NZL (9) <del>(10)</del>	

<sup>1</sup> i.e. Kyrkland.

<sup>2</sup> i.e. Gimel.

<sup>3</sup> i.e. Lis.

	<i>Fill-up of quota from Riders Rankings according to Art. 624</i>	<i>AUS (10)</i>	<sup>4</sup>
6.	<i>In accordance with the specifications noted under the heading 'Tripartite Commission (IOC-ANOC-FEI) Invitation places', Invitation places may be distributed to NOCs if confirmed by the Tripartite Commission</i>	+	
	<i>TOTAL</i>	<i>10</i>	

We note that under [5] 3. the words “and Oceania” have clearly been accidentally omitted.

22. Pursuant to the decision of Finland, which had qualified under 624.2 D not to make use of its quota position, Australia was allocated a second starting place (Ms Hanna). Pursuant to a similar decision by Israel which had qualified under 624.2.E, France was allocated a second starting place (Ms Tebar) (FEI Press News 21 July 2004). In both instances, in our view, this was effected under Article 624.4. Neither Article 624.2 B, C or D has an internal mechanism allowing, if the NOC with a qualified quota position does not use it, the next NOC simply to step into its shoes. Article 624.4 is a specific provision dealing with unused individual positions. We reject the Australian NOC’s argument that Ms Hanna’s place was allocated under 624.2 D as inconsistent with the plain language of the Article read as a whole. Policy considerations do not assist. The (in our view) proper construction promotes quality, even at the expense of diversity.
23. The list of final entries dated 21 July 2004 published by FEI contained, inter alia, the following names:

<i>Australia, 2 riders / 2 horses</i>	<i>Mary Hanna</i>
	<i>Ricky MacMillan</i>
<i>France, 2 riders / 2 horses</i>	<i>Julia Chevanne Gimel</i>
<i>[IOC]</i>	<i>Karen Tebar</i>
<i>Greece 3 riders / 3 horses</i>	<i>Alaia Demiropoulou</i>
	<i>Gerda Lebmann</i>
	<i>Alexandra Sourias</i>
<i>Ireland 1 riders / 1 horses</i>	<i>Heike Holstein</i>
<i>Russia</i>	<i>Elena Sidneva</i>

24. As appears from that list, the IOC has exercised its power to issue two invitations under Article 624 2 F to the NOC/NF thereby making the Greek a team (see also FEI Press release 21 July 2004). We were told that the IOC had to validate Ms K. Tebar (change of nationality). In this way, the number of individual Dressage places was brought up to its maximum of 10).
25. The FEI letter correctly asserts that an NOC which obtains a place via Article 624.2. B or C cannot gain one through D. The RNOOC do not dispute this.

<sup>4</sup> i.e. MacMillan. We were told that there was no 2003 FEI World Dressage Challenge in Olympic Group F. Article 624.2 was used although strictly speaking was not a case of an unused qualified quota position, but of an absence of a qualified quota position.

26. The RNOC, however, do not rely on Article 624.2 D, as the REF letter makes clear, but rather on the power to reallocate unused quota positions under Article 624.4.
27. In our view, the FEI made an error, albeit in good faith, in allocating second places to Australia and France in that order rather than to Russia. They did so by reference to the “short-cut” version of the ranking list referred to in paragraph 20 above. This list was, for reasons set out in paragraph 15, above, incomplete. There was no warrant in the regulations for excluding riders of nations already qualified under Article 624.2 B and C. Article 624.3 did not permit such exclusion. A proper list would by corollary have included such riders.
28. The FEI, as a result of our request, produced a reconstructed list which satisfied the imperatives of Article 624.3 in so far as it included both riders of nations already qualified under Article 624.2 B and C and riders of nations represented by teams. When that list was produced, it could be seen that Ms Korelova outranked Ms Tebar of France, and indeed both Mr MacMillan and Ms Hanna of Australia<sup>5</sup>. Her points ranking was 71.460.
29. In our view, the FEI cannot rely vis-à-vis the RNOC on its own failure to produce an approved list meeting the criteria of Article 624.3. If the reconstructed list had been used pursuant to Article 624.4 for the purpose of allocating the quota positions unused by Finland and Israel, the RNOC should, in our view, have received a second place.
30. It was urged on us that the RNOC had delayed in instituting this appeal. References were made to discussions at the FEI Assembly in April 2004, the publication of the “short-cut” version in May 2004, and telephonic communications between the FEI and REF. The FEI letter, however, suggests that the REF might have, without fault, misunderstood the tenor of these discussions. For our part, we consider that it was not until the publication by the FEI of the official entry list on 21 July 2004 (see paragraph 5.4 above) that the clock started to run against the RNOC: we do not consider we should dismiss an otherwise well-founded application on such ground.
31. The RNOC made it clear that their primary wish was for an additional place to be allocated to them, in addition to the places allocated to the Australian and French NOCs. The substitution of a Russian competitor for a competitor from one of the other two NOCs was their application of last resort. In accordance with the reconstructed list it would have been a French competitor who would be the victim of any substitution. The FEI, for their part, were they not constrained by their own regulations which specified a maximum of 10 spaces for NOCs not represented by a team (Article 624.2), would also, in the circumstances, they told us, be content for an addition as distinct from a substitution.
32. We also note that, after allocation by the FEI of additional places to the Australian and French NOCs, these NOCs acted upon that allocation, and the respective riders have incurred effort and expense (in the Australian case arriving in Athens, and in the French case making preparations for imminent arrival). Furthermore, the expectations of the riders in question have included the high honour of participating in the world’s major sporting festival. For these reasons, pursuant to general principles of law and considerations of justice, fairness and

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<sup>5</sup> Indeed Mr Macmillan of Australia and Ms Gimel of France as well.



reasonableness, we would, had it been open to us, have made an order for addition rather than substitution. In this was, prejudice to the French rider, Ms Tebar could be avoided. However, the applicable regulations appear to allow no such latitude to the FEI (or to us).

33. The solution may lie in the hands of the IOC. Article 624.2 F allows invitation places to be distributed to NOCs if confirmed by the Tripartite Commission, even if the result is that there would be more than the 10 spaces contemplated by Article 624.2.
34. Furthermore, the IOC, as the supreme authority of the Olympic Games, has, under the Olympic Charter (Article 9.2 read with Articles 1 and 19.4), in our view, the power to achieve a just and equitable result in this case by adding a place for a Russian competitor.

**On the basis of the foregoing facts and legal aspects, the ad hoc Division of the Court of Arbitration for Sport renders the following decision:**

1. The decision of the FEI of 11 August 2004 is set aside.
2. The RNOC was and is entitled to a second individual Dressage place in the Games of the XXVIII Olympiad in Athens on a proper interpretation of Articles 624.2, 624.3 and 624.4 of the FEI Regulations.
3. (By way of recommendation only) that such second place be allocated to the RNOC through invitation in addition to the second places allocated to the Australian NOC and the French NOC.