



**Arbitration CAS 2004/A/555 Hellenic Hockey Federation (HHF) v. International Hockey Federation (IHF) & South African Hockey Association (SAHA), award of 6 July 2004**

Panel: Prof. Michael Geistlinger (Austria), President; Mr Chris Georghiades (Cyprus); Mr Stephan Netzle (Switzerland)

*Hockey*

*Qualification of a team for the Olympic Games*

*Assignment of an arbitration procedure to one of the CAS Divisions*

*Admissibility of the appeal*

*CAS power of review with regard to purely technical rules*

*Interpretation of the qualification system for the 2004 Olympic Games*

1. Art. S20 of the CAS Code provides that arbitration proceedings submitted to the CAS are assigned by the Court Office to one of the two Divisions according to their nature. Such assignment may not be contested by the parties or raised by them as a cause of irregularity. In accordance to the CAS Code, a CAS panel is not entitled to address the issue of the assignment of the matter to the Appeals Arbitration Division and the submission of an arbitration to the appeals arbitration procedure, even if the text of the applicable regulations refers to the ordinary arbitration procedure.
2. *“Raising a dispute”* in the sense of art. 20.2 FIH Statutes implies a notification in writing addressed to each other side. Such notification should make clear for a third person reading this text that a dispute in terms of law eventually leading to a procedure before CAS has been raised.
3. The issue of the compliance of the pitch with the FIH standards is a purely technical one pertaining to the rules which are the responsibility of the federation concerned. Such rules do not shield from the control of judges, but their power of review is limited to that which is arbitrary, illegal or contrary to social norms or general principles of law. However, exercising this competence must be tempered by the respect due to the particularities of each sport as defined by the rules established by the sports federations.
4. Missing a clear wording of the criteria with regard to the implicit replacement of a team, well established general rules and principles of interpretation of law apply. These rules state that if there is no other indication that can be derived from a legal provision it is the reading of its text in good faith in accordance with the ordinary meaning to be given to their terms in the light of their object and purpose which shall decide. When interpreting the qualification system for the 2004 Olympic Games, it seems logical and in conformity with the purpose of the host nation rule that the FIH, as soon as one country decided not to proceed in the qualification process, apply the same system for replacing the withdrawn nation by the next qualified team that had been applied to the withdrawn country itself.

The present dispute relates to the qualification of the Greek men's hockey team to the 2004 Olympic Games and to the condition of the pitch during the matches that such team had to play on 18 and 19 February 2004 in Madrid.

During its meeting held between 4 and 6 July 2002, the Executive Board of the FIH decided the following qualification system for the Greek men's hockey team to the Olympic tournament:

*“The qualification standard to be met by the Men's and Women's Greek teams will be as follows:*

*Stage 1 : If either (or both) of the teams qualify for the finals of the European Nations Cup, qualification guaranteed for the Olympic Games*

***If either one (or both) of the teams do not qualify via European Nations Cup Qualifier, the following:***

*Stage 2 : Greece to play the 12<sup>th</sup> qualified team (from a ranking point of view) in a best of 3 play-off competition immediately prior to the Olympic Qualifier.*

***If Greece wins the play-off - qualifies for Olympic Games.***

*If Greece loses the play-off - not eligible for Olympic Games”.*

Such qualifying system was submitted to the approval of the International Olympic Committee (IOC) by letter of 26 July 2002 of FIH.

By letter dated 17 June 2003 the President of the Hellenic Olympic Committee asked the FIH to consider the request of modification of the qualification criteria, in that the Greek Hockey Team would participate directly in the Olympic Games of Athens 2004.

On 14 October 2003, FIH sent to Mr Gilbert Felli, the IOC's Olympic Games Executive Director, an update of the progress and preparation of the Greek men's and women's Hockey teams. FIH further informed that the Greek men's hockey team would play either Cuba or Canada (depending upon the final results of the All Africa Games), the 12<sup>th</sup> ranked team for the Olympic Qualifier.

By email dated 3 November 2003, the FIH required the HHF to have its women's team qualified against Russia and its men's team to qualify against Canada as Cuba had advised that it would not participate in the Qualifier.

The President of the Hellenic Olympic Committee asked the FIH by letter dated 5 November 2003 to recognize the Greek men's team either having qualified automatically or to have the team played against Cuba, even if Cuba did not participate in the Olympic Games. Forced to play against Canada would deteriorate the position of the Greek team.

By email of 8 November 2003 the HHF supported the proposal of the President of the Hellenic Olympic Committee and added the alternative to play against France in case Cuba was not accepting to play against Greece. This was considered to be more fair, as France was ranked next in line after Cuba. The HHF held that Greece was enough penalized by, holding the 50<sup>th</sup> rank, having been required to play against the 17<sup>th</sup> (Cuba).

On 20 November 2003 the HHF sent an excerpt of an expert opinion of the General Secretary of the International Union of Sports Law, Professor of Sports Law at the Athens University, Dimitrios Panagiotopoulos to the FIH and copied this to a number of other organisations and bodies. As a result Professor Panagiotopoulos held that the decision of the FIH had been done without any legal ground and without the approval of the IOC and amended the qualification criteria. It violated the approved criteria and treated the Greek national team unfavourably as well as unequally.

On 21 November 2003 the President of FIH informed the President of the Hellenic Olympic Committee and copied to the President of the HHF and to the IOC that the FIH *“Executive Board has carefully considered the whole matter and after having been advised we have decided that we cannot meet your request for the Greek hockey team to play Cuba’s hockey team in Cuba since Cuba withdrew from the Olympic Qualifying tournament and can not be considered as the 12<sup>th</sup> qualified team for this tournament”*.

On 17 December 2003 the IOC Sports Director concluded that the qualification criteria, as laid down by the FIH, and accepted by the IOC and the Hellenic Olympic Committee, were clear and should be respected.

By fax of 19 December 2003, FIH informed the President of the Hellenic Olympic Committee and copied to HHF and IOC that its decision was and remained that the Greek men’s team was required to play Canada in the best of three play-off competition which would take place in Madrid as Canada had advised that they were unable to agree to it being held in Athens.

By fax of 26 January 2004, HHF referring to the letter of the IOC Sports Director to the FIH of 17 December 2003 informed the FIH that it insisted *“on respecting the F.I.H’s decision, which was approved by I.O.C., that the Greek team must play the 12<sup>th</sup> ranked team (Cuba)”*. In the decision, the possibility of playing with an alternative (substitute) team is not mentioned, and thus unilateral modification of the decision is not acceptable”. The HHF uses this letter also to inform the FIH *“that we have already advised the Hellenic Olympic Committee and the Greek Government about this problem and we are expecting their approval and the necessary financing to appeal to TAS-CAS. In any case our team is ready to play against Canada, but we explicitly reserve our right of appeal”*.

By letter dated 28 January 2004 and copied to IOC, FIH answered to HHF, refuting the latter’s argument with respect to the 12<sup>th</sup> qualified team. FIH also pointed out that the Appellant had no basis upon which to make an appeal to CAS.

On 17 February 2004, HHF filed a complaint with the Tournament Director of the play-off-competition whereby it formally requested the FIH *“to officially declare that the Greek National Hockey Men’s team as qualifier to participate in the 2004 Olympic Games of Athens”*. It also informed FIH that it was *“applying for arbitration by CAS in order to settle the above dispute”*.

By letter dated 17 February 2004, HHF submitted an Application for Arbitration against the FIH on the object *“Qualification of the Hellenic National Men’s Hockey Team in the 2004 Olympic Games”*. The Appellant’s prayer for relief is that the Greek men’s hockey team be included in the participating teams at the 2004 Olympic Games.

Apart from the qualification issue, HHF also raised objections concerning the feasibility of the pitch in “Club de Campo” in Madrid, where the play-off between the Greek and the Canadian teams were

to take place, and its compliance with FIH standards, given by FIH in its Handbook of Performance Requirements, Hockey Pitch Solutions.

By letter dated 18 February 2004, the FIH Tournament Director, Mr Harald Steckelbruck, declared to the HHF not to be competent to decide on the qualification criteria issue. With regard to the issue related to the pitch at Club de Campo the Tournament Director advised *“that the pitch is an FIH approved pitch and the FIH has awarded the Olympic Qualifying Tournament and the Play-Off Competition to his venue on this pitch”*.

On 18 February 2004, the Greek men’s hockey team played the first play-off game against Canada, which defeated them 7:1. On the following day, these teams played the second play-off game. Canada defeated Greece 3:1.

On 19 February 2004, the CAS Court Office acknowledge receipt of the appeal filed by the Appellant

The Appellant pointed out that the appeal was based on art. 20.2 of the FIH Statutes and that it had to be handled according to art. R38 of the Code of sports-related arbitration (hereinafter referred as “the Code”).

On 2 March 2004, HHF filed its appeal brief.

The Olympic Qualifier was held in Madrid between 2 and 13 March 2003. The team from South Africa ranked 7<sup>th</sup>.

On 29 March 2004, the FIH filed its answer.

By fax of 29 March 2004, the South African Hockey Association (SAHA) applied to intervene in this dispute. As it ranked 7<sup>th</sup> at the Olympic Qualifier and as the Greek men’s hockey team had lost against Canada, the South African men’s hockey team had qualified to the Olympic Games. SAHA requested CAS *“to refuse the appeal by the HHF and allow the South African Men’s Hockey team to takes [sic] its legitimate and properly secured place in the Athens Olympic Games”*.

Both, HHF and FIH agreed to the intervention of SAHA, *inter alia* by signing the order of procedure issued on 29 April 2004 by the President of the Panel.

By fax dated 23 April 2004, HHF quoted FIH’s Answer *“... FIH does not object to the matter proceeding and being decided upon its merits”*. It alluded that FIH thereby clearly waived the procedural questions. It also pointed out that the National team of Greece was the only team of the host country in the history of the Olympic Games that had been asked to qualify to the Olympic Games. HHF confirmed its position that the time limit for filing the appeal to CAS started running when it raised its formal complaint to the FIH’s representative on 17 February 2004.

By fax dated 27 April 2004, HHF further maintained that no time limit applied in the case in hand.

By fax dated 6 May 2004, the SAHA confirmed to support and endorse the submissions of the FIH.

The hearing was held in Lausanne on 19 May 2004.

## LAW

### Nature of the Application

1. The parties have made submissions regarding the assignment of the arbitration procedure to the Appeals Arbitration Division and have pointed at Art. 20.1 FIH Statutes which expressly refers in brackets to the “ordinary arbitration procedure” before CAS. However, art. S20 of the Code provides the following:

*“The CAS is composed of two divisions, the Ordinary Arbitration Division and the Appeals Arbitration Division.*

***The Ordinary Arbitration Division** constitutes Panels, whose task is to resolve disputes submitted to the ordinary procedure, and performs, through the intermediary of its President or his deputy, all other functions in relation to the smooth running of the proceedings conferred upon it by the Procedural Rules (Articles R27 et seq.).*

***The Appeals Arbitration Division** constitutes Panels, whose task is to resolve disputes concerning the decisions of federations, associations or other sports-related bodies insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide. It performs, through the intermediary of its President or his deputy, all other functions in relation to the smooth running of the proceedings conferred upon it by the Procedural Rules (Articles R27 et seq.).*

*Arbitration proceedings submitted to the CAS are assigned by the Court Office to one of these two Divisions according to their nature. Such assignment may not be contested by the parties or raised by them as a cause of irregularity.*

*[...]”.*

2. It follows that in accordance to the Code, the Panel is not entitled to address the issue of the assignment of the matter to the Appeals Arbitration Division and the submission of this arbitration to the appeals arbitration procedure. This matter will thus be handled in accordance with art. R47 ff. of the Code, notwithstanding the text of art. 20.1 FIH Statutes and its reference to the ordinary arbitration procedure.

### Jurisdiction of the CAS

3. In accordance with the order of procedure signed by the Parties, the jurisdiction of CAS derives from art. 20.1 FIH Statutes, which reads as follows:

*“Any dispute between FIH on the one side and a Member or a person or body referred to in article 18.1 on the other side, shall be submitted to the Jurisdictional Body which has jurisdiction in accordance with the Statutes, Bye-Laws and Regulations. If no Jurisdictional Body has jurisdiction, the dispute shall be submitted, to the exclusion of any other jurisdiction, whether ordinary or arbitral, to the CAS and resolved definitively in accordance with the Code of Sports-related Arbitration (ordinary arbitration proceedings)”.*

4. There is no doubt – and it is undisputed – that CAS has jurisdiction to rule both on the dispute related to qualification of the Greek men’s hockey team to the Olympic Games of Athens and on the dispute related to the compliance of the pitch in Madrid with the FIH’s standards.

### **Law Applicable**

5. Art. R58 of the Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

6. In the present case, the parties have made no particular choice of law. They have relied on the regulations of the FIH, namely its Statutes and its Tournament Regulations. Those regulations shall thus apply primarily. As FIH has its seat in Lausanne, Switzerland, Swiss law may apply complementarily.

### **Admissibility of the Appeal**

7. All parties to the case in hand hold the jurisdiction of the CAS being based on art. 20.1 FIH Statutes. Art. 20.1 FIH Statutes is inseparably linked to art. 20.2 FIH Statutes which reads as follows:

*“The Claimant must apply for arbitration by CAS within one (1) month after having raised the dispute. The parties may agree to extend this time limit”.*

8. The Panel finds that there is no agreement between the parties on the extension or waiver of this time limit. The HHF points at a sentence used by FIH in its Answer of Respondent which reads: *“However, despite the above facts, FIH does not object to the matter proceeding and being decided upon its merits”*. The HHF understands this sentence as acceptance of its offer *“to consider the case on the merits without having regard to any time limits provided for”* (from) *“the rules of the FIH or CAS”*. The FIH opposes this reading of its text decidedly and is supported by the SAHA. The Panel holds that the sentence in question cannot be separated from its context.
9. The complete text of the relevant part of the Answer of First Respondent does not support the HHF’s view of the existence of an agreement on the extension or waiver of the time limit in terms of art. 20.2 FIH Statutes. There obviously was no will on the side of the FIH to have attributed to its writing the HHF’s understanding.

10. The Panel therefore holds that the Application for Arbitration of the HHF, dated 17 February 2004, had to comply with the time limit laid down by art. 20.2 FIH Statutes. FIH and SAHA contend that the appeal was lodged after the expiry of such time limit of one month.
11. The Panel finds that this time limit was clearly met with regard to the dispute concerning the compliance of the pitch at Club de Campo.
12. With regard to the dispute concerning the Olympic qualification criteria, in their submissions in writing and at the hearing the parties argued different moments for starting to count the deadline of “*one (1) month after having raised the dispute*”. HHF held that the provision of art. 20.2 FIH Statutes was unclear and ambiguous and had to be interpreted *contra stipulatorem*, since a person applying this provision was not able to determine the exact date on which a dispute was raised. Accordingly, a discussion of an issue or an exchange of arguments cannot be regarded as “*raising*” a dispute, it is required a “*formal letter of complaint which clearly shows that one party to the dispute does finally not agree with the outcome of certain discussions and intends to take legal steps against the other party*”. Furthermore, in the HHF’s view, the wording of art. 20.2 implies that only the claimant and not the defendant can raise a dispute. Since HHF filed the request for arbitration with CAS on 17 February 2004, it is this date which is decisive with regard to counting the deadline under art 20.2 FIH Statutes according to HHF. On the other side, FIH finds that art. 20.2 FIH Statutes is not unclear or ambiguous. It considers that the dispute was raised by the email of 7 November 2003 from HHF to FIH, whereby HHF argued that Greece had to qualify automatically for the Olympic Games in Athens.
13. The Panel finds that for “*raising a dispute*” in the sense of art. 20.2 FIH Statutes considering its text in its ordinary meaning and taking into account its context as well as its aims and purposes, understood in good faith by the addressees, there must have taken place a notification in writing addressed to each other side which must have such a wording that it becomes clear for a third person reading this text that a dispute in terms of law eventually leading to a procedure before CAS has been raised.
14. It is left to the appraisal of the submitted evidence by the arbiters, taking all relevant circumstances into account, that for a neutral person there was a dispute in terms of law, but also that none of the parties was willing to move, that all reasonable attempts to reach a settlement failed and that the next step was to open a formal dispute settlement procedure. All these elements follow from reading art. 20.2 FIH Statutes as a legal text basing the competence of the CAS for matters of the hockey family.
15. The Panel holds that by email exchange on 3/8 November 2003 no such dispute has been raised. The email of 3 November 2003 was sent by the FIH Events Manager, Mr Dennis Meredith, to the President and the Secretary General of the HHF. The Events Manager is no person authorised by the FIH Statutes to represent FIH in terms of law. Art. 9 lit. (a) FIH Statutes clearly rules that the FIH President represents the FIH. It follows from art. 11 lit. (e) FIH Statutes that the President may deputise the Honorary Secretary General for assisting him in carrying out his duties. This authority for deputising is not limited to specific issues and obviously is used by the FIH President for officially contacting the FIH member associations. The President and Secretary General of HHF answered by letter dated 7 November and emailed

- on 8 November 2003 to Mr Meredith and did address neither the President nor the Honorary Secretary General of FIH.
16. The Panel holds that also the next following exchange of letters did not meet the elements deduced from art 20.2 FIH Statutes. By letter dated 20 November 2003 the President and the Secretary General of HHF addressed *inter alia* the President of FIH and submitted an advisory opinion and asked to examine the HHF's positions and for an FIH's decision. Such a decision was taken and a respective information given by the FIH President, however, in a letter addressed to the President of the Hellenic Olympic Committee on 21 November 2003 and only copied to the HHF President by email on 22 November 2003. The Panel further holds that also the exchange of letters initiated by the letter of the Hon. Secretary General of the FIH, Mr Peter L. Cohen, dated 19 December 2003, did not meet art. 20.2 FIH Statutes. The letter was addressed to the President of the Hellenic Olympic Committee and was only copied to HHF accompanied by a letter signed by the FIH Events Manager.
  17. Thus, the Panel holds, that it is the letter by the FIH Hon. Secretary General dated 20 January 2004 which in a legally binding manner asked the HHF President to confirm in writing that the Greek men's hockey team would play Canada and that the full details of the Greek team's travel and accommodation arrangements would be provided. By answer dated 26 January 2004, addressed to the Hon. Secretary General of the FIH, the President and the Secretary General of the HHF declared to play Cuba, but explicitly reserved their right on behalf of HHF to appeal to CAS.
  18. Therefore, the Panel considers that HHF raised its dispute by this letter of 26 January 2004 in accordance with art. 20.2 FIH Statutes.
  19. As a consequence, the deadline to seize CAS expired on 26 February 2004. As the HHF's Application for Arbitration was lodged with CAS on 17 February 2004, the Panel finds that the arbitration procedure related to the Olympic qualification criteria was also initiated in due time.

## Merits

### A. *As to Compliance of the Pitch at Club de Campo*

20. Art. 1.1 FIH Tournament Regulations Outdoor Competitions (hereinafter referred as "Tournament Regulations") states that a tournament shall be conducted in accordance with the current Rules of Hockey and Tournament Regulations of the FIH. Provisions with regard to the prerequisites for a pitch are not included in the Tournament Regulations. They can be found in the FIH Rules of Hockey. The respective provisions there do not cover the issues raised by HHF in its complaint and Application for Arbitration. Indications for pitch profile, pitch smoothness, pitch watering, pitch overruns and additional pitch overruns are part of the FIH Handbook of Performance. Requirements and Test Procedures for Synthetic Hockey Pitches – Outdoor, as revised in March 1999 (hereinafter referred as "FIH Handbook").

21. From point of view of legal systematic this FIH Handbook, irrespective of the legal nature of its provisions, must be considered to be part of the rules of and for the game of hockey.
22. According to the jurisprudence of CAS, such rules do not shield from the control of judges, but their power of review is limited to that which is arbitrary, illegal or contrary to social norms or general principles of law. However, exercising this competence must be tempered by the respect due to the particularities of each sport as defined by the rules established by the sports federations (see CAS OG 96/006, Published in Digest of CAS Awards 1996-1998, pp 409 – 411 (para. 11- 14); CAS OG 00/012, published in Digest of CAS Awards II 1998-2000, pp. 674 – 679 (para. 12)).
23. The FIH Handbook is composed as a guidance for FIH member associations, pitch manufacturers or pitch suppliers as well as pitch proprietors generally and others. Under chapter 1.2 as part of the introduction it can be read as follows:

*“For practical purposes it is impossible for the F.I.H. to impose these Standards effectively at all levels of hockey throughout the world. The system of product approvals should help to ensure uniformity and improve performance standards to the benefit of the game.*”
24. The Handbook introduces three different levels of Standards, but even for the highest level, that for global competitions including qualifying tournaments it only provides for “*more stringent*” Standards, which means that there are no mandatory rules, but only recommendations more or less open for deviation in concrete cases pending on the level of competition.
25. It could be doubted whether the decision by the Tournament Director dated 18 February 2004 can be really considered a decision on the complaint, as it reads as follows:

*“Secondly, in relation to your concerns re the pitch at Club de Campo I advise that the pitch is an FIH approved pitch and the FIH has awarded the Olympic Qualifying Tournament and the Play-Off Competition to this venue on this pitch”.*
26. By referring to the approval of the pitch in general by FIH and its decision on awarding the Olympic Qualifying Tournament and the Play-Off Competition to the pitch at Club de Campo the arguments raised by HHF have not been answered by the Tournament Director, but simply deferred to a higher instance. Such a higher instance obviously did not become involved, as it remained unanswered by the documents as well as by the parties during the hearing whether there had been established an Appeal Jury at Club de Campo which to set up art. 15 FIH Tournament Regulations leaves to the discretion of the FIH Executive Board.
27. In any event, the answer that should have been given to the Appellant is a purely technical one pertaining to the rules which are the responsibility of the federation concerned. In accordance with the consistent jurisprudence of CAS, the Panel finds that it is not for it to review these rules. As in the matter CAS OG 96/006, this restraint is all the more necessary since, far from where the decision was taken, the Panel is less well-placed to decide than the FIH’s representatives, who were in Madrid. In addition, as there are no mandatory rules for a specific quality of the pitch beyond those contained in art. 1 FIH Rules of Hockey, there is no legal

measure for finding the decision appealed from to be arbitrary or illegal. At the hearing the Appellant could not further substantiate the danger for players and umpires as well as for ball attendants and other officials argued from disrespect of the FIH Handbook's provisions with regard to the external dimensions of the pitch and by the problems with pitch watering. The Panel could not find any other social norms or general principles of law which could have been violated by the respective decision to this end.

28. It follows for the Panel that the appeal must be dismissed on this issue.

*B. As to the Olympic Qualification Criteria*

29. The letter of the IOC Sports Director dated 17 December 2003 includes a letter by the FIH Hon. Secretary General addressed to the NOC's and FIH affiliated National Associations dated 3 March 2003 which contains the qualification criteria having been laid down by the FIH and accepted by the IOC and by the Hellenic Olympic Committee. Even if it becomes not clear from this letter, from any of the other documents and from the FIH statements during the hearing when the decision including approval by the FIH/IOC Executive Board has been taken to the details shown by this letter, the Panel does not find any disagreement between the parties that the letter dated 3 March 2003 contained the Olympic qualification criteria in effect for the Athens Games 2004. With regard to the host nation – Greece, the criteria order Greece *“to play the 12<sup>th</sup> qualified team of the Men’s Olympic Qualifying tournament in a best of three play-off competition immediately prior to the Olympic Qualifier tournament a place and dates to be confirmed”*. the parties disagree on the question whether *“the 12<sup>th</sup> qualified team”* means an abstract position based on the ranking at the 10<sup>th</sup> World Cup and, if necessary, on the placings at the 10<sup>th</sup> World Cup Qualifier and includes an implicit replacement rule in case a concrete team goes out, which means that the next placed team comes in, or whether it is an abstract position to be filled by only one concrete team without replacement possibility. In this case, if the 12<sup>th</sup> qualified team goes out, Greece will be qualified automatically.
30. At the hearing the FIH pointed at logics and at a general practice within the hockey family to apply an implicit replacement rule in all comparable cases. According to number 2 of the Bye-Law to rule 45 of the IOC Charter it is the FIH which has authority to apply the eligibility criteria in this case. The HHF held against that no replacement team was mentioned by the Olympic qualification criteria and that it therefore was not a matter of application of the criteria, but of an amendment of their establishment, which needed for FIH/IOC Executive Board approved decision.
31. The Panel regrets that the qualification criteria do not explicitly address all possible circumstances that could allow HHF like all other FIH national associations to fully understand the criteria. The Panel holds, however, to feel confronted with a question of interpretation and application of the criteria and not with a question of their amendment. The case deals with the application of the abstract criteria on a concrete case. The bodies involved on both sides in the decision-making under number 1 Bye-Law to rule 45 of the IOC Charter would be overburdened if each such concrete case in all Olympic sports federations would have to be dealt with by them as a matter of amendment of the eligibility criteria. Thus, the will of both

- parties involved in the adoption of the qualification criteria, the FIH and the IOC Executive Board, must be seen in having one decision on the establishment of the criteria prior to the beginning of the qualification period and to leave it to the respective International Federation (FIH) to apply these criteria, thereafter. It would be a matter of amendment of the criteria if, for example, the number of the teams agreed upon for the Olympic hockey competition would be enlarged from 12 to 14 teams. This would cause a new wording of the criteria and an amendment would be obvious.
32. Missing a clear wording of the criteria with regard to the implicit replacement of a team, the Panel feels bound to apply general rules and principles of interpretation of law, well established on the international level as well as under Swiss law, which is the law applicable to this case. These rules state that if there is no other indication that can be derived from a legal provision it is the reading of its text in good faith in accordance with the ordinary meaning to be given to their terms in the light of their object and purpose which shall decide.
  33. At the hearing and in their submissions in writing all parties involved had agreed that it was the purpose of the host nation rule to provide for a minimum qualification of the Greek men's and women's teams. Thus, the purpose of the host nation rule could not be to provide for automatic qualification of the Greek men's team, when the concrete team holding the 12<sup>th</sup> qualified team position decided not to proceed. In such case no objective evaluation of the quality of the Greek men's team would have taken place. On the other hand, at the moment when the qualification criteria had been established nobody could foresee which concrete team would end up at the 12<sup>th</sup> qualification position. The same follows from the abstract nature of the contents of the respective rule.
  34. Therefore, the Panel holds that the purpose of the host nation rule also could not be to guarantee for Greece to play against a specific concrete team. The Panel finds that it was logical and is considered to be in conformity with the purpose of the host nation rule that the FIH, as soon as Cuba decided not to proceed in the qualification process, applied the same system for replacing Cuba by the next qualified team that had been applied to Cuba itself. Cuba had been the last of 11 participants ranked at the 10<sup>th</sup> World Cup. When Cuba withdrew, FIH had to select one country on the basis of its ranking at the 10<sup>th</sup> World Cup Qualifier. As the first seven countries on this list (Argentina, Spain, Poland, Belgium, India, Japan, New Zealand) already were qualified for participation in the Olympic Qualifying tournament, Canada correctly became the 12<sup>th</sup> qualified country to participate in this tournament. The Panel, therefore, finds that Greece had to play Canada on the basis of the Olympic qualification criteria.
  35. The HHF's appeal is thus also dismissed on this issue.
  36. Since Greece lost the matches 1 and 2 of the play-off competition in Madrid on 18/19 February 2004 and the teams agreed not to play the final match on 21 February 2004, Greece is not qualified to participate in the hockey tournament at the Athens 2004 Olympic Games. The Panel regrets that, as a result of the lack of clarity of the qualification criteria, the host country is left out of the Games in hockey, thus preventing a likeable tradition to remain.

**The Court of Arbitration for Sport rules:**

1. The Court of Arbitration for Sports has jurisdiction to hear the appeal filed on 17 February 2004 by the Hellenic Hockey Federation.
  2. The appeal filed by the Hellenic Hockey Federation is admissible.
  3. The appeal filed by the Hellenic Hockey Federation is dismissed.
- (...).