



**Arbitration CAS ad hoc Division (OG Rio) 16/022 Czech Olympic Committee (COC) & Czech Cycling Federation (CCF) v. Union Cycliste Internationale (UCI), award of 9 August 2016**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Mohammed Abdel Raouf (Egypt); Mrs Carol Roberts (Canada)

*Cycling*

*Allocation of quota places*

*Admissibility of the application with regard to the time when the dispute arose*

**If the dispute has arisen before the 10 days' time frame stipulated in Article 1 of the CAS ad hoc Rules, the application is inadmissible and the whole claim must be dismissed.**

**1 PARTIES**

- 1.1 The First Applicant is the Czech Olympic Committee (the “COC”), based in Prague, Czech Republic, the National Olympic Committee for the Czech Republic.
- 1.2 The Second Applicant is the Czech Cycling Federation (the “CCF”), based in Prague, Czech Republic, the organisation responsible for cycling.
- 1.3 The Respondent is Union Cycliste Internationale (the “UCI”) based in Aigle, Switzerland, the World Governing Body for cycling.
- 1.4 The Interested Party is Ms. Martina Sáblíková (“Ms Sáblíková”), a cyclist and a three time Olympic Gold Medallist speed skater from the Czech Republic.

**2 FACTS**

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
- 2.2 In 2015, Ms Sáblíková finished in 12<sup>th</sup> place at the Individual Time Trial (the “ITT”) at the UCI World Championships at Richmond, Virginia.

- 2.3 On 1 June 2016, the UCI released via its website the list of Athletes quota for the road cycling women's events at the Games of the XXXI Olympiad Rio 2016 (the "Rio Games"). The COC was not included on such list.
- 2.4 On 3 June 2016, the CCF wrote to the UCI expressing its concerns that the COC had not received a quota and that Ms Sábliková was not therefore entered for the Women's ITT for the Rio Games. The CCF alleged that there had been an error by the UCI in allocating the quotas.
- 2.5 Later on 3 June 2016, the UCI responded to the CCF, stating its position that its nation had not finished within the top 22 nations of the UCI and it did not have an athlete in the top 100 of the UCI Elite Individual Ranking. Further, the 25 quota places for the ITT are taken from the 67 athletes that are qualified for the Women's Road Race at the Rio Games, in accordance with the UCI's "Rio 2016 – Road Cycling – Qualification System".
- 2.6 Between 15 June and 18 July 2016, the CCF and the UCI exchanged further letters stating their positions on the interpretation of the "Rio 2016 – Road Cycling – Qualification System" (the "Qualification System"). The CCF also requested the UCI to agree to subject the dispute to arbitration and to confirm whether all quotas had been allocated. However, on 18 July 2016, the UCI stated that the matter was "closed".
- 2.7 On 18 July 2016, WADA's Independent Person, Mr. Richard McLaren, published on the WADA website its official independent report (the "McLaren Report") describing a fraudulent, government directed scheme to protect Russian athletes from anti-doping rule violations, including with respect to disqualification during the Sochi Winter Games.
- 2.8 On 24 July 2016, the IOC Executive Board issued a decision to all international federations (including the UCI) concerning the participation of Russian athletes in the Rio Games.
- 2.9 On 26 July 2016, the Applicants' attorney wrote to the UCI to again seek clarification from the UCI as to whether all quota places had been allocated or not.
- 2.10 On 28 July 2016, the UCI issued a press release concerning a number of Russian Athletes that had received a quota for the Rio Games. Following the decision of the IOC, a number of Russian riders had been withdrawn by the UCI from the Rio Games. One of these was Ms Olga Zabelinskaya, who had qualified to compete in the road race and the ITT at the Rio Games.
- 2.11 On 29 July 2016, the Applicants' attorney wrote again to the UCI calling it to allocate the Russian Olympic Committee's quota relating to Ms Zabelinskaya to the COC, for use by Ms Sábliková. The UCI did not respond to this correspondence.
- 2.12 On 3 August 2016, the CAS Ad Hoc Division rendered its award in *CAS OG 16/013* pursuant to which the IOC directed the UCI to reinstate Ms Zabelinskaya into the Rio Games for the road race and the ITT.
- 2.13 On 7 August 2016, the women's road race in the Rio Games went ahead with 68 riders, as the IOC had determined to allow the Puerto Rican rider that had been reallocated the place of Ms Zabelinskaya in the road race only, to be allowed to compete additionally.

### 3 CAS PROCEEDINGS

- 3.1 On 6 August 2016 at 13.45 (time of Rio de Janeiro), the Applicants filed an application with the CAS Ad Hoc Division against the UCI's decision.
- 3.2 On 6 August 2016 at 19.00 (time of Rio de Janeiro), the CAS Ad Hoc Division notified the Parties of composition of the Panel:  
Mr. Mark A. Hovell, United Kingdom, as president;  
Dr. Mohamed Abdel Raouf, Egypt, as arbitrator; and  
Ms. Carol Roberts, Canada, as arbitrator.
- 3.3 In the same communication, the Panel directed the Respondent to provide its reply to the Applicants' application, the Interested Party her amicus curiae, if any, and to inform the Parties that the Panel had determined to convene a hearing.
- 3.4 On 7 August 2016 at 11.20 (time of Rio de Janeiro), after hearing from the Applicants and the Respondent regarding the cut off for the upcoming Women's ITT for the Rio Games, the Panel amended its directions and directed the Respondent to provide its reply to the Applicants' application and the Interested Party her amicus curiae before 7 August 2016 at 16.00 (time of Rio de Janeiro). Moreover, such communication informed the Parties that the hearing in this matter would be held at 9.00 (time of Rio de Janeiro), on 8 August 2016.
- 3.5 On 7 August 2016 at 13.45 (time of Rio de Janeiro), the Respondent asked for a short extension of time until 19.00 (time of Rio de Janeiro) that day to file its Answer. The Panel granted such extension.
- 3.6 On 7 August 2016 at 19.00 (time of Rio de Janeiro), the UCI filed its Answer.
- 3.7 On 8 August 2016, at 09.00 (time of Rio de Janeiro), the hearing took place at the offices of the CAS Ad Hoc Division. The Panel was joined by Mr. William Sternheimer, Deputy Secretary General of the CAS, and following persons also attended the hearing: for the Applicants, Dr Martin Maisner and Dr Jiri Janak, both Counsel and additionally, for the First Applicant, its President, Mr Jiri Kejval; for the Respondent, Mr Antonio Rigozzi, Counsel and Mr Martin Gibbs, Director General of the UCI; and for the Interested Party, Mr Ondres Novak, Counsel and Ms Sábliková, in person.
- 3.8 After the legal submissions made by both Parties, Ms Sábliková addressed the Panel. There were no objections to the constitution of the Panel or to the Parties' rights to be heard and treated equally in these proceedings.

#### 4 PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

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 Applicants*

4.2 The Applicants submitted that there was not a "decision" per se that it was appealing against, rather they had expressed their concerns in June 2016 to the UCI that no quota had been allocated to the COC. This was a special kind of dispute, not one where there was a formal decision taken by the UCI, but this dispute was in relation to the Rio Games and was brought to the CAS Ad Hoc Division after the Rio Games had commenced. In the correspondence in the months of June and July 2016, the Applicants were asking the UCI "to explain" matters to them and they were "looking for solutions", but no legal action had commenced, as the Applicants felt there had been an administrative mistake that would be rectified, once it was pointed out to the UCI.

4.3 The Applicants submitted that the Qualification System was not clear and transparent, did not respect the Olympic Charter and was discriminatory. Additionally, these rules are "not absolute" and the Panel could "correct and overcome" the rules, by rendering an unprecedented, "inventive" decision. This would mean allocating a 26<sup>th</sup> place in the ITT to Ms Sábliková, as this would be within the Panel's powers and would respect the Olympic ideals.

4.4 The Applicants' requests for relief are as follows:

*"With respect to all facts stated above, the Applicants request the Panel to issue following award:*

- i. *Adjudicate the unused quota place for the Women's Individual Time Trial at Games of the XXXI Olympiad at Rio de Janeiro 2016, that had been declined by the respective National Olympic Committee and therefore became subject to reallocation, to Czech Olympic Committee.*

*Should it become clear during the proceedings that the aforementioned place was already reallocated to another NOC, the Applicants respectfully request the Panel to reflect the currently vacant WITT quota place originally assigned to Russian Olympic Committee to issue following award:*

- ii. *Adjudicate the unused quota place for the Women's Individual Time Trial at Games of the XXXI Olympiad at Rio de Janeiro 2016 originally assigned to Russian Olympic Committee to Czech Olympic Committee.*

*In case the previously requested awards could not be objectively issued due to the decision of the Panel or with respect to objective circumstances and intermediate course of the Reallocation, the Applicants ask the Panel to consider the circumstances of this unfortunate case of Ms. Sábliková, and thus, the Applicants respectfully request the Panel to issue following award:*

- iii. *Adjudicate extra (26<sup>th</sup> participants place) quota place for the Women's Individual Time Trial at Games of the XXXI Olympiad at Rio de Janeiro 2016 to the Czech Olympic Committee".*

**b. The Respondent**

- 4.5 It is unclear what decision from the UCI the Applicants' are appealing against. The list of quotas was issued on 1 June 2016 and on 3 June 2016 the UCI explained clearly to the Applicants why there was no quota allocated to them. The position of the UCI was "totally crystallised" on 18 July 2016, when it informed the Applicants that the matter was "closed". The Applicants then have a month to appeal any such decision to the CAS, pursuant to Articles 74 & 75 of the UCI Statutes. The UCI submitted that the Applicants had, in bad faith, prolonged the dispute and waited until the CAS ad Hoc Division was "open" to appeal to CAS, seeking a more favourable procedure. The UCI submitted that the CAS jurisprudence of *CAS OG 10/002* and *CAS OG 12/004* supported its argument that the application was inadmissible before the CAS Ad Hoc Division.
- 4.6 The UCI submitted that its Qualification System, which has been in place for many years, could not be clearer. In order to compete in the ITT "you must already be entered in the road race". Ms Sábliková was not. Whilst sympathetic to Ms Sábliková and appreciating how it may indeed advance certain values and ideals of the Olympics to have her compete in both Winter and Summer Games, she was not qualified.
- 4.7 The UCI could not "settle" this dispute with the Applicants, else it would have to either give a place earned by another rider through the Qualification System to her or somehow create an additional place. It was unable to perform the latter, as only the IOC determines the maximum number of quotas. Whilst an additional rider did participate in the road race, this was at the direction of the IOC. In order for the Panel to consider the 3<sup>rd</sup> prayer for relief of the Applicants, the IOC would have needed to be a party to this procedure. The Panel cannot create a new rule to allow her to compete; rather it can review existing rules where they are arbitrary, grossly unfair or discriminatory. These rules are not and have also been applied in prior Olympic Games.
- 4.8 The UCI's requests for relief are as follows:

*"The UCI submits that, as is clear from the above developments, the Applicants' case is inadmissible and must be dismissed on that basis.*

*The UCI also notes that, even in the event the Panel is inclined to consider the substance of the Applicants' position, the Applicants position is without merit and must be dismissed".*

**5 JURISDICTION AND ADMISSIBILITY**

- 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 The Panel notes that the UCI contested this jurisdiction in its submissions on the basis of the 10 day rule. The Panel refers to Article 1 of the CAS Arbitration Rules for the Olympic Games (the “CAS Ad Hoc Rules”) to consider the position.

5.3 Article 1 of 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...”.*

5.4 The Panel notes that there was some debate as to whether there was a decision taken by the UCI and, if so, when. Alternatively, whether this was a “special type of dispute”. The UCI cited the CAS jurisprudence relating to Article 1 of the CAS Ad Hoc Rules. In *CAS OG 12/002* it was stated as follows:

*“4.7[...] In this case, as of 28 June 2012 the Applicant already knew that he had not been awarded a place for the Olympic Games and had sought legal advice (see the letter of Mr Ward’s solicitor to the IOC dated 28 June 2012, supra at para. 1.10: “You will be aware that our ... client was not selected as the next best boxer to compete in the 81kg division of the upcoming London Olympics”).*

*4.8 Then, a written explanation of why he had not been selected was provided in full by the IOC on behalf of the Tripartite Commission on 2 July 2012 (see supra at para. 1.11) and the Applicant objected by letter dated 11 July 2012 (see supra at para. 1.14).*

*4.9 Therefore, at the latest, the “dispute arose” on 11 July 2012, when the Applicant objected formally, based on receipt of the rationale for the decision. Thus, the dispute did not arise within the time period required by Article 1 of the Ad Hoc Rules, which begins 17 July 2012. Indeed, on 11 July 2012 the Applicant through his solicitor clearly stated that he did not agree with the decision made, as he disputed the basis for the decision, thus having explicitly identified that a dispute had arisen. At that point, it is obvious, based on the facts of this case, that the Applicant took issue with the decision. The Panel is not saying that it is up to the athlete to decide when the issue arose, but rather that the facts will be examined in each case based on the good faith understanding of the athlete or other aggrieved party and the relevant facts giving rise to when the dispute arose. Another element in this analysis is that at no time did the IOC (acting on behalf of the Tripartite Commission) alter its rationale for the decision, but rather, the IOC sought to clarify the rationale based upon the specific questions of the Applicant.*

*4.10 An applicant to the CAS ad hoc Division cannot rely on the Schuler award to mean that s/he, through an exploration designed to learn the rationale for a decision with which s/he disagrees, can extend the time when a “dispute arose” into the period identified in Rule 1 of the Ad Hoc Rules. As set forth in the Schuler award, Ms Schuler first received a written explanation of her exclusion on 1 February 2006. Then Ms Schuler considered the issue and, having done so, complained for the first time through her application on 6 February 2006, within the time period required by Rule 1 of the Ad Hoc Rules. That is distinct from this case. Even if the Panel accepts that “a written explanation of [his] exclusion” is required as Ms Schuler received, that written explanation was provided by the IOC on 2 July 2012 and, as said, the Applicant objected by letter dated 11 July 2012”.*

- 5.5 The Panel notes the position of the UCI that the quota allocation was disputed by the Applicants on 3 June 2016; whereas the Applicants refer to this letter (and the ones that followed) as communications “*asking to explain*”. The Panel notes that there were many communications, with reference to legal remedies and that on 18 July 2016, these were brought to an end by the UCI’s letter saying the matter was “*closed*”. Whilst the Applicants wrote again a couple of weeks later on 26 July 2016, the Panel has concluded that the Parties were in dispute at the latest once the UCI had closed the debate formally on 18 July 2016.
- 5.6 As such, the Panel notes that this dispute was then brought before the CAS on 6 August 2016, in the Applicants’ application, but as the dispute existed as from 18 July 2016, at the latest, it is outside of the 10 day rule in Article 1 of the CAS Ad Hoc Rules, dealing with the admissibility to the CAS Ad Hoc Division. The Panel determine that this application is inadmissible and it follows that the whole claim must be dismissed.

## 6 CONCLUSION

- 6.1 The Applicants’ application to the CAS Ad Hoc Division filed on 6 August 2016 shall be dismissed.
- 6.2 All other prayers for relief are rejected.

### **The ad hoc Division of the Court of Arbitration for Sport renders the following decision:**

The application of the Czech Olympic Committee and the Czech Cycling Federation to the CAS Ad Hoc Division filed on 6 August 2016 is dismissed.