



Arbitration CAS 2015/A/4222 Italian Canoe Federation (ItCF), Italian National Olympic Committee (CONI), British Olympic Association (BOA), British Canoeing (BC) v. International Canoe Federation (ICF), Russian Canoe Federation (RCF), Russian Olympic Committee (ROC), Danish National Olympic Committee (DNOC), Danish Canoe Federation (DCF), French National Olympic Committee (CNOSF), French Canoe Federation (FFCK), award of 16 January 2017 (operative part of 23 March 2016)

Panel: Mr José María Alonso Puig (Spain), President; Mr Michele Bernasconi (Switzerland); Prof. Ulrich Haas (Germany)

Canoe (sprint)

Olympic Qualification System

CAS Power of review

Interpretation of rules established by international sports bodies

Contra proferentem principle

Fairness principle

1. Policy decisions by an international federation (IF) when drafting its rules are not subject to CAS review or control. However, once the rules are set the IF is bound to adequately apply and interpret them, and both application and interpretation of the rules by the IF are subject to complete CAS scrutiny. In applying this scrutiny CAS will consider an objective interpretation of the rules, evaluating principally the text and purpose of the rules.
2. Absent a clear interpretation that can be taken uniquely from the literal wording of a provision of the rules established by international sports bodies, a CAS panel in charge of a dispute resulting from the ambivalent wording must consider other means of interpretation in order to determine the provision's meaning. In this regard, when interpreting rules established by international sports bodies, to the extent it can be adequately ascertained, the intent of the sports body when drafting the rules (*i.e.* the sports objectives that the rules reach for) is a factor of important weight. When the evidence at hand helps to determine the organization's intent at the time of drafting the rules, and this intent does not blatantly contradict the text of the norm, this should be taken into consideration. This does however not mean that any *ex post* ascertainment of purpose by the international body can be considered to be an "authentic interpretation" of the rules, particularly when it is made once a dispute has arisen.
3. The *contra proferentem* rule of interpretation may be of importance in contractual interpretation where one of the party drafts an obscure clause. It may also be of relevance in the interpretation of statutory rules predisposed by an entity, on disciplinary measures where unclear wording cannot be the basis of a conviction. However, it cannot be applied in a case where the rule enacting body merely acts as a

deciding authority on issues that only affect its associates, where none of the latter effectively intervened in the drafting of the obscure rule. This is even more the case in a constellation where the *contra proferentem* interpretation would not benefit one party against the drafter of the obscure rule, and the unclear rule would always benefit one or several associate(s) and at the same time damage one or several other associate(s).

4. The fairness principle allows a CAS panel to disregard the strict application of a norm where it would clearly and disproportionately be contrary to a strict understanding of fairness in sport. However, in cases of qualification for a certain competition, where the total number of athlete quota places is fixed, the fairness principle is not applicable in circumstances where the CAS panel, in order to command that some athletes be given quota places, would have to take away quota places from other athletes that have already earned their place under an interpretation of the qualification rules that the same panel has found to be correct.

I. PARTIES

A. APPELLANTS

1. First Appellants: Comitato Olimpico Nazionale Italiano (CONI) & Italian Canoe Federation (ItCF)

1. The Comitato Olimpico Nazionale Italiano (hereinafter “CONI”), is the National Olympic Committee for Italy, recognized by the International Olympic Committee (“IOC”).
2. The Italian Canoe Federation (“ItCF”), is the national governing body for canoeing in Italy, member of the Comitato Olimpico Nazionale Italiano and affiliated to the International Canoe Federation.
3. CONI and the ItCF filed a joint statement of appeal and are hereby jointly referred to as the “First Appellants”.

2. Second Appellants: British Olympic Association (BOA) & British Canoeing (BC)

4. The British Olympic Association (“BOA”), is the National Olympic Committee for Great Britain and Northern Ireland, recognized by the International Olympic Committee.
5. British Canoeing (“BC”), is the national governing body for canoeing in Great Britain, member of the British Olympic Association and affiliated to the International Canoe Federation.
6. BOA and BC have filed a joint appeal brief and are hereby jointly referred to as the “Second Appellants”.

B. RESPONDENTS

1. First Respondent: International Canoe Federation (ICF)

7. The International Canoe Federation (“First Respondent” or “ICF”), is the umbrella organization of all national canoe organizations worldwide.

2. Second Respondent: Russian Olympic Committee (ROC)

8. The Russian Olympic Committee (“Second Respondent” or “ROC”), is the National Olympic Committee for Russia, recognized by the International Olympic Committee.

3. Third Respondent: Russian Canoe Federation (RCF)

9. The Russian Canoe Federation (“Third Respondent” or “RCF”), is the national governing body for canoeing in Russia, member of the Russian Olympic Committee and affiliated to the International Canoe Federation.

4. Fourth Respondents: Danish National Olympic Committee (DNOC) & Danish Canoe Federation (DCF)

10. The Danish National Olympic Committee (“DNOC”), is the National Olympic Committee for Denmark, recognized by the International Olympic Committee.
11. The Danish Canoe Federation (“DCF”), is the national governing body for canoeing in Denmark, member of the Danish National Olympic Committee and affiliated to the International Canoe Federation.
12. DNOC and DCF have filed joint answers and are hereby jointly referred to as the “Fourth Respondents”.

5. Fifth Respondents: French National Olympic Committee (CNOSF) & French Canoe Federation (FFCK)

13. The French National Olympic Committee (“CNOSF”), is the National Olympic Committee for France, recognized by the International Olympic Committee.
14. The French Canoe Federation (“FFCK”), is the national governing body for canoeing in France, member of the French National Olympic Committee and affiliated to the International Canoe Federation.
15. CNOSF and FFCK have filed joint answers and are hereby jointly referred to as the “Fifth Respondents”.

16. The abovementioned shall be referred to collectively as the “Parties”.

II. FACTUAL BACKGROUND

17. This arbitration involves the Canoe Sprint discipline, one of the canoeing disciplines that the ICF regulates, and one that features in the Olympics¹.
18. Canoe Sprint at the Olympics is organized in the following way:
- There are two different *categories* of boats:
 1. Canoes (“C”)²
 2. Kayas (“K”)³.

This arbitration relates just to kayaks.

- Both *genders* compete at Canoe Sprint Kayak:
 1. Men (“M”)
 2. Women (“W”).
- There are three different *boat classes* (sizes of boats) within Kayak Sprint, depending on the number of paddlers in the boat:
 1. Kayak Single (“K1”)
 2. Kayak Double (“K2”)
 3. Kayak Four (“K4”).
- There are three different *distances* over which the boat classes compete:
 1. 200 m (M and W)
 2. 500 m (W only)
 3. 1000 m (M only).
- There are nine kayak events made up of *category, gender, boat class* and *distance*⁴:
 1. K1 200 m (M)

¹ The sprint discipline is a race to the line on a flat water course. There are various different canoeing disciplines, however, the two that feature at the Olympics are Canoe Sprint and Canoe Slalom.

² In a canoe, the paddle has a single-blade and the athlete uses a striding position with one knee on the deck and the other foot forward allowing room to pull the paddle down their preferred side of the canoe.

³ In a kayak, the paddler is seated and uses a double-bladed paddle pulling the blade through the water on alternate sides to propel the boat forward.

⁴ “Events”, Section A of the Qualification System Rules, Exhibit 2, ItCF & CONI’s Statement of Appeal, page 1.

2. K1 1000 m (M)
3. K2 200 m (M)
4. K2 1000 m (M)
5. K4 1000 m (M)
6. K1 200 m (W)
7. K1 500 m (W)
8. K2 500 m (W)
9. K4 500 m (W).

i). The adoption of rules for the allocation of places at the Rio Games

19. The ICF, supervised by the IOC, sets the rules for the allocation of the total number of paddlers that may participate in the Games of the XXI Olympiad in 2016 (the “2016 Rio Games”).
20. The rules for the allocation of places at the 2016 Rio Games are covered in a document entitled “International Canoe Federation Canoe Sprint Qualification System - Games of the XXXI Olympiad - Rio 2016” (the “OQS”).
21. The allocation of quotas for participation in the Olympic Games is regulated in Sections D “Qualification Pathway” and F “Reallocation of Unused Quota Places” of the Qualification System Rules. Section D is divided into three main subsections reflecting the three Qualification Pathways to the 2016 Rio Games:
 1. Qualification Places
 2. Host Country Places
 3. Tripartite Commission Invitation Places.
22. The present case only concerns the rules regarding “Qualification Places” and Section F of the OQS. For the purposes of this arbitration, any further reference to Host Country Places and Tripartite Commission Invitation Places is irrelevant.
23. In essence, pursuant to Section D:
 - A named paddler competing in an event does not secure for himself or herself a personal athlete place at the 2016 Rio Olympics. Instead, paddlers win *athlete quota places* for their National Olympic Committee (“NOC”) by their performance in qualification competitions.
 - Athletes can try and qualify at one or more events. However, an athlete can only acquire one athlete quota place at a Competition for his or her NOC per event, regardless of how many places or boats that athlete tries to qualify.

- There is a *maximum number of athletes* that may participate per NOC:
 - a NOC may at most obtain 8 Men’s Kayak athlete quota places
 - a NOC may at most obtain 6 Women’s Kayak athlete quota places.
- *Boat quota places* in events are allocated to the NOCs finishing in the highest positions in the qualification competitions. A NOC may only enter one boat in each event at the Olympics.
- For each event there are a number of athlete quota places and boat quota places available to be won, as detailed in Section D:

The number of athlete and boat quota places for Canoe Sprint will be as follows:

Events	Athletes Quota Places	Boat Quota Places
Men		
K1 1000m	14	14
K1 200m	14	14
K2 1000m	20	10
K2 200m	20	10
K4 1000m	40	10
C1 1000m	13	13
C1 200m	13	13
C2 1000m	24	12
TOTAL MEN	158	96
Women		
K1 500m	14	14
K1 200m	14	14
K2 500m	20	10
K4 500m	40	10
TOTAL WOMEN	88	48
TOTAL (Men + Women)	246	144

- However, there is no maximum number of boats that may participate in any given event. In other words, a NOC’s paddlers which have qualified for the Olympic Games in a particular event can decide to compete in any other event through what is known as *doubling up*. This may only happen if there are enough paddlers to enter that event (i.e. enough qualified paddlers to fill a boat) and if there is not already another boat entered by that NOC in that particular event.
- Athletes may qualify either at the Sprint World Championships or at the Continental Qualifiers. This, however, does not apply to K4 competitions, where all positions are allocated during the World Championships.

24. Furthermore, Section D provides, regarding qualification at the World Championships:

K1 and C1 events (Men and Women)

The best ranked athletes will receive one (1) athlete quota place for their NOC in the respective events. The numbers are indicated in the table above.

K2 and C2 events (Men and Women)

The six (6) best ranked NOCs from the 2015 ICF Canoe Sprint World Championships in Men's C2, K2 and Women's K2 events will receive two (2) athlete quota places each.

K4 events (Men and Women)

All the athlete quota places will be allocated at the 2015 ICF Canoe Sprint World Championships.

The 10 best ranked NOCs from the 2015 ICF Canoe Sprint World Championships will receive four (4) athlete quota places each.

There must be at least four (4) continents represented in the 10 best ranked NOCs.

In the case that there are less than four (4) continents represented in the 10 best ranked NOCs, then the tenth (10th), ninth (9th) and if necessary, the eighth (8th) ranked place(s) will be given to the next best ranked NOC at the 2015 ICF Canoe Sprint World Championships from a continent without any K4 athlete quota places.

Qualification in the same boat class over two distances at the World Championships

Where the same athlete qualifies an athlete quota place in the same boat class but for two (2) different distances (for example: Men's K1 1000m and K1 200m) the NOC will be attributed the place in 1000m for men or 500m for women. The unused athlete quota place in the 200m distance will be reattributed to the next best ranked NOC in that event, not yet qualified.

Qualification in different boat classes at the World Championship

An athlete who qualifies more than one (1) athlete quota place at the 2015 ICF Canoe Sprint World Championships in different boat classes (i.e. K1, K2, K4 or C2 and C1) will be attributed only one (1) athlete quota in the largest qualified boat class (regardless of how many places that athlete qualifies in other events). The remaining athlete quota place would be reallocated to the next best ranked NOC not yet qualified using the following procedure:

- i) On completion of the 2015 Canoe Sprint World Championships, should two (2) athlete quota places be available from team boats in the same gender and category (for example: Men's Kayak, Men's Canoe or Women's Kayak) then the places will be added together and given to the next best ranked NOC not yet qualified in that category (1000m distance for Men and 500m for Women), starting with the largest boat class.
- ii) On completion of the 2015 Canoe Sprint World Championships, if one (1) athlete quota place is available from team boats then the reallocated athlete quota place will be used to fill a team boat from the next best ranked NOC not yet qualified in that category where an athlete quota place is required within the same category and gender (for example: Men's Kayak, Men's Canoe or Women's Kayak) to complete a boat quota, starting with largest distance and largest boat.
- iii) If the athlete quota place is unable to fill a team boat following the procedure outlined above then the place will be attributed to the next best ranked NOC not yet qualified in the single events (i.e. K1 Men, C1 Men, K1 Women) in the same category and distance from which the athlete quota place came from.

25. Finally, Section F provides, regarding qualification at the World Championships:

2015 ICF Canoe Sprint World Championships

If an allocated quota place from the 2015 ICF Canoe Sprint World Championships is not confirmed by the NOC by the confirmation of quota place deadline or is declined by the NOC then the quota place will be reallocated to the next best ranked NOC in that event, not yet qualified. This process will be repeated until all places are allocated.

ii). The 2015 ICF Canoe Sprint World Championships

- 26. The first qualifying event for the 2016 Rio Games was the 2015 ICF World Championships, which took place in Milan between 19 and 23 August 2015.
- 27. The results of the Kayak events at the 2015 World Championships, the consequent allocation and reallocation of places are set out in full in the Results Spreadsheet. The events relevant to this arbitration are shown below:
 - 1. Men's events: (M) K4 1000 m and (M) K2 1000 m
 - In the **(M) K4 1000 m event**, 10 boat quota places and 40 athlete quota places were available to be won.

- The finishing order (for the relevant positions in this arbitration) was as follows:

Position	Team	Athletes
1.	Slovakia	Denis MYSAK, Erik VLCEK, Juraj TARR, and Tibor LINKA
2.	Hungary	Zoltan KAMMERER, David TOTH, Tamas KULIFAI, and Daniel PAUMAN
3.	Czech Republic	Daniel HAVEL, Lukas TREFIL, Josef DOSTAL, and Jan STERBA
4.	Australia	David SMITH, Riley FITZSIMMONS, Jacob CLEAR, and Jordan WOOD
5.	Portugal	Fernando PIMENTA, Joao RIBEIRO, Emanuel SILVA, and David FERNANDES
6.	Spain	Javier HERNANZ, Rodrigo GERMADE, Oscar CARRERA, and Inigo PENA
7.	Romania	Traian NEAGU, Catalin TURCEAG, Daniel BURCIU, and Petrus GAVRILA
8.	Belarus	Pavel MIADZVEDZEU, Andrei TSARYKOVICH, Vitaliy BIALKO, and Raman PIATRUSHENKA
9.	Russia	Ilya MEDVEDEV, Anton VASILYEV, Alexey VOSTRIKOV, and Pavel NIKOLAEV
10.	Germany	Felix LANDES, David SCHMUDE, Martin SCHUBERT, and Kai SPENNER
11.	Kazakhstan	Ilya GOLENDONOV, Daulet SULTANBEKOV, Andrey YERGUCHYOV, and Alexandr YEMELYANOV
12.	Argentina	Daniel DAL BO, Juan Ignacio CACERES, Pablo DE TORRES, and Gonzalo CARRERAS

- In principle, the first ten boats (and forty athletes) were to obtain qualification to the Olympics. However, considering that four continents had to be represented by the qualifying NOCs, Russia's (9) and Germany's (10) positions were taken by the next best non-qualified NOCs coming from non-represented continents: Kazakhstan (11, Asia) and Argentina (12, South America).
- In the **(M) K2 1000 m event**, 12 athlete quota places and 6 boat quota places were available to be won at the 2015 World Championships.

- The finishing order (for the relevant positions in this arbitration) was as follows:

Position	Team	Athletes
1.	Germany	Max RENDSCHMIDT and Marcus GROSS
2.	Australia	Kenny WALLACE and Lachlan TAME
3.	Serbia	Marko TOMICEVIC and Milenko ZORIC
4.	Slovakia	Erik VLCEK and Juraj TARR
5.	Belarus	Vitaliy BIALKO and Raman PIATRUSHENKA
6.	France	Arnaud HYBOIS and Etienne HUBERT
7.	Lithuania	Ricardas NEKRISIUS and Andrej OLJNIK
8.	Italy	Nicola RIPAMONTI and Giulio DRESSINO

- In principle, the first six NOCs (and twelve athletes) were to obtain qualification to the Olympics. However, as the Slovak and Belarusian athletes also qualified for the K4 1000 m event, their athlete quota places became vacant.
 - The Appeal by the First Appellants relates to the reallocation of those four quota places (two from the Slovak team and two from the Belarusian team).
 - The ICF reallocated the four vacant athlete quota places to the next best non-qualified NOC in the K4 1000 m event: Russia. The Appellants understand that they should have been reallocated to the next best non-qualified NOCs in the K2 500 m events (Lithuania and Italy).
2. Women's events (W) K2 500 m and (W) K4 500 m
- In the **(W) K4 500 m event**, 40 athlete quota places and 10 boat quota places were available to be won at the 2015 World Championships.

- The finishing order (for the relevant positions in this arbitration) was as follows:

Position	Team	Athletes
1.	Belarus	Marharyta MAKHNEVA, Nadzeya LIAPESHKA, Volha KHUDZENKA, and Maryna LITVINCHUK
2.	Hungary	Gabriella SZABO, Danuta KOZAK, Krisztina FAZEKAS-ZUR, and Anna KARASZ
3.	Germany	Franziska WEBER, Conny WASSMUTH; Verena HANTL; and Tina DIETZE
4.	Poland	Karolina NAJA, Beata MIKOLAJCZYK, Ed DZIENISZEWSKA KIERKLA and Ewelina WOJNAROWSKA
5.	Great Britain	Jessica WALKER, Rachel CAWTHORN, Rebeka SIMON, and Louisa SAWERS
6.	Serbia	Nikolina MOLDOVAN, Milica STAROVIC, Dalma RUZICIC BENEDEK, and Olivera MOLDOVAN
7.	Ukraine	Mariia KICHASOVA, Mariya POVKH, Anastasiia TODOROVA, and Inna HRYSHCHUN
8.	France	Lea JAMELOT, Amandine LHOTE, Sarah TROEL, and Gabrielle TULEU
9.	New Zealand	Jaimee LOVETT, Caitlin RYAN, Aimee FISHER, and Kayla IMRIE
10.	Denmark	Emma Aastrand JORGENSEN, Amalie Ringtved THOMSEN, Henriette Engel HANSEN, and Ida VILLUMSEN
11.	Australia	Jo BRIGDEN-JONES, Alana NICHOLLS, Naomi FLOOD, and Bernadette WALLACE
12.	China	Wenjun REN, Jieyi HUANG, Qing MA, and Haiping LIU
...
18.	Argentina	Mara Magdalena GARRO, Sabrina Ines AMEGHINO, Alexandra B. KERESZTESI, and Brenda ROJAS

- In principle, the first ten boats (and forty athletes) were to obtain qualification to the Olympics. However, considering that four continents had to be represented by the qualifying NOCs, France's (8) and Denmark's (10) positions were taken by the next best non-qualified NOCs coming from non-represented continents: China (12, Asia) and Argentina (18, South America).

- In the **(W) K2 500 m event**, 12 athlete quota places and 6 boat quota places were available to be won at the 2015 World Championships.
- The finishing order (for the relevant positions in this arbitration) was as follows:

Position	Team	Athletes
1.	Hungary	Gabriella SZABO and Danuta KOZAK
2.	Serbia	Milica STAROVIC and Dalma RUZICIC BENEDEK
3.	Germany	Franziska WEBER and Tina DIETZE
4.	Poland	Karolina NAJA and Beata MIKOLAJCZYK
5.	Russia	Elena ANYSHINA and Kira STEPANOVA
6.	China	Wenjun REN and Qing MA
7.	Denmark	Emma AASTR and JORGENSEN and Henriette Engel HANSEN
8.	Romania	Roxana BORHA and Elena MERONIA
9.	Great Britain	Lani BELCHER and Angela HANNAH
10.	Belarus	Marharyta MAKHNEVA and Maryna LITVINCHUK
11.	Kazakhstan	Natalya SERGEYEVA and Irina PODOINIKOVA
12.	Austria	Ana Roxana LEHACI and Viktoria SCHWARZ

- In principle, the first six NOCs (and twelve athletes) were to obtain qualification to the Olympics. However, as the Hungarian, Serbian, German, Polish, and Chinese athletes also qualified for the K4 500 m event, their athlete quota places became vacant.
- The Appeal by the Second Appellants relates to the reallocation of those ten quota places (two from each of the five teams).
- The ICF reallocated the ten vacant athlete quota places first to the next best non-qualified NOCs in the K4 500 m event: France and Denmark and the remaining two quota places, as they could not fill a K4 boat, to the next best non-qualified NOC in the K2 500 m event (Romania). The Appellants understand that all the vacant places should have been reallocated to the next best non-qualified NOCs in the K2 500 m event (Romania, Great Britain, Belarus, Kazakhstan and Austria).

28. As a consequence of the above the Appellants challenge the ICF Decision of 6 September 2015, by which the ICF allocated athlete and boat quota places for the 2016 Rio Games to National Federations (“NF”), after the 2015 World Championships (the “Decision Under Appeal”)⁵.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 28 September 2015, the First Appellants filed their Statement of Appeal against the First, Second and Third Respondents. The First Appellants further requested an extension of the time limit to file their Appeal Brief.
30. On 1 October 2015, CAS acknowledged receipt of the Statement of Appeal. The arbitration would be conducted in English before a Panel of three arbitrators appointed pursuant to the Code of Sports-related Arbitration (“CAS Code”).
31. On 2 October 2015, the time limit to file the Appeal Brief was suspended, pending the answer by the Respondents on the request for extension by the First Appellant.
32. On 6 October 2015, the Third Respondent confirmed its agreement to the extension requested as well as with the appointment of a panel and the language of the proceedings. On 7 October 2015, the Second Respondent confirmed its agreement in the same terms. On that same date, the First Respondent accepted the extension of the time limit. However, it noted that the intervention of other parties that could be affected by the decision would have to be decided. On 8 October 2015, CAS granted the First Appellants an extension of the time limit to file their appeal.
33. On 13 October 2015, the ICF sent a letter to the National Olympic Committees and National Federations of Great Britain, Kazakhstan, Austria, Lithuania, France, and Denmark. In its letter it informed them that an appeal had been filed by the ItCF and CONI regarding the OQS. In the understanding that BOA and BC would be filing a similar appeal and to avoid multiple litigations, the ICF invited BOA and BC to join their appeal to this proceedings and invited all other parties, who could be affected by the decision, to intervene.
34. On 23 October 2015, the Second Appellants formally requested CAS its authorisation to intervene in these proceedings, filing an appeal against the Decision Under Appeal. In that letter, the Second Appellants supported and confirmed the nomination of arbitrator initially made by the First Appellants.
35. On 23 October 2015, the First Respondents requested that the time limit to file their Answer be extended by 20 days, as accepted by the First Appellant. This request was granted by CAS on the same date.

⁵ Exhibit 1, ItCF and CONI’s Statement of Appeal.

36. On 26 October 2015, the First Appellants filed their Appeal Brief.
37. On 26 October 2015, the CAS invited the Parties to comment on the request for intervention of the BOA and BC.
38. On 27 October 2015, the First Appellants accepted the BOA and BC's request to intervene. On 2 November 2015, the Second and Third Respondents accepted the intervention of the BOA and BC.
39. On 2 November 2015, the First Respondent filed its commentaries on the BOA and BC's request for intervention. The First Respondent accepted the Second Appellants' request for intervention as long as (i) the French and Danish Federations and NOCs be allowed to intervene if they so elected as they would be affected by the decision at hand; (ii) the BOA, BC and any other intervening party stand as party to the arbitration; and (iii) all Parties submit to CAS a timetable going forward. On 9 November 2015, the BOA and BC confirmed their acceptance of the conditions set by the ICF.
40. On 9 November 2015, the First Appellants informed CAS of their acceptance of the intervention of the BOA and BC, reserving a right to reconsider their nomination of arbitrator.
41. On 10 November 2015, CAS informed the Parties that a Panel had been formed to hear this dispute, constituted as follows:

 President: Mr. José María Alonso Puig, attorney-at-law in Madrid, Spain
 Arbitrators: Mr. Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland
 Mr. Ulrich Haas, professor in Zurich, Switzerland.
42. On 10 November 2015, the First Respondents requested that the time limit to file their Answer be suspended until the Second Appellants' request for intervention was decided.
43. On 11 November 2015, the CAS informed the Parties that the Panel would decide on the request for intervention by the BOA and BC.
44. On 12 November 2015, the Third Respondent requested an extension of the time limit to file its Answer equivalent to that of the First Respondent. On that same day, the First Appellant agreed with the requested extension.
45. On 16 November 2015, the CAS, upon request of the Second Respondents on 13 November 2015, and acceptance by the First Appellant, agreed to extend the Third Respondents' deadline to file its Answer in line with that of the First and Second Respondent, thus extending it by 20 days.
46. On 18 November 2015, the Panel accepted the intervention of the BOA and BC. The ICF was requested to invite the French and Danish Olympic Committees and Canoeing Federations to intervene. Upon their intervention, the Parties would be requested to comment on a procedural

calendar to be followed and the quality of each intervening party. All pending deadlines were suspended until these procedural issue was solved.

47. On 18 November 2015, the ICF formally invited the French and Danish Olympic Committees and Canoeing Federations to intervene in the proceedings.
48. On 23 November 2015, the CAS informed the Parties that Mr. Sebastián Mejía, Attorney-at-law in Madrid, Spain accepted his nomination as *ad-hoc* clerk in these proceedings.
49. On 24 November 2015, the Fifth Respondents requested their intervention in these proceedings, reserving their rights regarding jurisdiction of the CAS and language of the proceedings.
50. On 25 November 2015, the Fourth Respondents requested their intervention in these proceedings.
51. On 30 November 2015, the Second and Third Respondents accepted the intervention of the Fourth and Fifth Respondents.
52. On 1 December 2015, the Appellants accepted the intervention of the Fifth Respondents raising, however, objections to the Fourth Respondents' reservation of rights, in particularly requesting that the Fourth Respondents unequivocally accept CAS jurisdiction and that the proceedings be carried out in English.
53. On that same date, the Second Appellants informed the CAS that in agreement with the First Appellants they intended to change their original arbitrator nomination.
54. On 4 December 2015, the Second Respondents filed a statement of defence. As all deadlines were suspended, the Second Respondents were informed that they would be invited to file again their submission once a definitive calendar had been agreed.
55. On 7 December 2015, the Fourth Respondents formally accepted CAS' jurisdiction and that the language of the proceedings would be English. Thus, they were accepted as parties to the proceedings with the agreement of all Parties.
56. On 8 December 2015, the Parties were granted until 16 December 2015 to reach an agreement on the procedural calendar and the quality of each intervening party.
57. On 15 December 2015, the President of the Panel and the Parties held a procedural conference call. In this conference call, the following agreements were reached:
 - (a) The BOA and BC would be considered as appellants. The DNOC, DCF, CNOSF and FFCK would be considered as respondents. The case reference would be modified accordingly.

- (b) A procedural calendar was agreed for the filing of the BOA and BC's Appeal Brief and the Respondents' Answers.
 - (c) A hearing would be held and the Parties agreed that the operative part of the award would be issued as soon as possible after the hearing, with grounds to follow.
 - (d) A decision on the composition of the Panel would follow in due course.
58. On 17 December 2015, the First Appellants informed the Panel of certain actions taken by the ICF Board in relation to the subject matter of this arbitration. The First Appellants requested that the ICF inform on the content of the meeting and confirmed that it accepted the full power of review of this Panel.
 59. On 21 December 2015, the CAS informed the Parties that in accordance with Article R41.4 para. 3 of the CAS Code, the President of the CAS Appeals Arbitration Division had decided that the composition of the Panel would not be changed.
 60. On that same date, the ICF informed the Panel that the board meeting to which the First Appellants referred was held merely for information purposes of all board members and that the ICF evidently accepted that this issue would be definitely decided by CAS.
 61. On 11 January 2016, the Second Appellants filed their Appeal Brief.
 62. On 26 January 2016, the First Respondent requested a 7-day extension of the time limit to file its Answer. On 27 January 2016, the Third, Fourth, and Fifth Respondents accepted the ICF's request and requested a similar extension. On 28 January 2016, the Appellants rejected the extension requested.
 63. On 28 January 2016, the Panel granted a 7-day extension to file their Answer to the First, Third, Fourth, and Fifth Respondents. The Answer by the Second Respondent would be notified together with the Answers of the other Respondents.
 64. On 29 January 2016, the Second Respondent filed its Answer.
 65. On 5 February 2016, the First and Fifth Respondents filed their Answers.
 66. On 8 February 2016, the Third Respondent filed its Answer. On that same date the Fourth Respondents filed their Answer.
 67. On 23 February 2016, the CAS informed the Parties that the hearing would be held on 14 March 2016.
 68. On 1 March 2016, the CAS sent a copy of the Order of Procedure for the Parties' signature.
 69. On that same date, the ICF informed the CAS on the availability of its witnesses Mr. Toulson and Mr. Garner.

70. On 3 March 2016, the Second Appellants, the First and Second Respondents sent CAS their signed copy of the Order of Procedure. On 4 March 2016, the Third and Fifth Respondents sent CAS their signed copy of the Order of Procedure. On 7 March 2016, the Fourth Respondents sent CAS their signed copy of the Order of Procedure. On 8 March 2016, the First Appellants sent CAS their signed copy of the Order of Procedure.
71. On 8 March 2016, the CAS informed the Parties on the procedural directions for the hearing. The Second Appellants and the Fourth and Fifth Respondents were requested to confirm whether their proposed witnesses would be testifying.
72. On 9 March 2016, the Second Appellants and the Fourth and Fifth Respondents confirmed that their proposed witnesses would not be testifying during the hearing.
73. On 14 March 2016, the hearing was held. All Parties attended the hearing and were duly represented.
74. At the beginning of the hearing and upon hearing the Parties, the Panel established a procedural timetable to which all Parties agreed. During the hearing the Parties examined Mr. Simon Toulson, Secretary General of the ICF. The Parties specifically waived the right to examine all other available witnesses.
75. At the end of the hearing all Parties confirmed that they had all received adequate opportunity to defend their case and that they had no objections in relation to the constitution of the Panel nor on the way the proceedings had been conducted.
76. On 23 March 2016, the CAS sent to the Parties a copy of the operative part of the Arbitral Award.

IV. THE PARTIES' SUBMISSIONS AND PRAYERS FOR RELIEF

77. The following is a brief description of the Parties' submissions in this arbitration. It does not depict in detail all of the Parties' arguments. However, they have all been taken into consideration by the Panel when making its award and specific reference to them is made in the Panel's decision on the merits.

A. Appellants

1. *First Appellants: Comitato Olimpico Nazionale Italiano (CONI) & Italian Canoe Federation (ItCF)*
78. The subject matter of the Appeal Brief regards the decision to reallocate the 4 (M) K athlete quota places, freed up (by Slovakia and Belarus) from (M) K2 1000 m, to the Russian (M) K4 1000 m boat. According to the Italian interpretation of the OQS, the 4 athlete quota places should have been reallocated to the next two ranked boats not yet qualified in the (M) K2 1000 m. Overall, they argue that the reallocation should be to (7) Lithuania and (8) Italy.

79. Firstly, regarding the interpretation of the reallocation provisions of the Qualification System Rules, the First Appellants hold that:

- There is a General Reallocation Provision and Specific Reallocation Provisions in the OQS.
- The General Reallocation Provision is contained in Section F of the Qualification System Rules and applies to the reallocation of all athlete quota places which fall to be reallocated as a consequence of the One Athlete Quota Place per Athlete Rule. It states the following:

If an allocated quota place from the 2015 ICF Canoe Sprint World Championships is not confirmed by the NOC by the confirmation of quota place deadline or is declined by the NOC then the quota place will be reallocated to the next best ranked NOC in that event, not yet qualified. This process will be repeated until all places are allocated.

- The Appellants argue that the General Reallocation Provision simply provides for the reallocation of the athlete quota place(s) to the next best ranked NOC in the event in question. They claim that certainly it deals primarily with the reallocation of athlete quota places where a NOC declines an athlete quota place or fails to confirm such place within the relevant deadline. However, they also assert that it is clear from the wording that the reallocation mechanism is also to be applied with respect to the initial reallocation of athlete quota places as a result of the One Athlete Quota Place per Athlete Rule.
- The Specific Reallocation Provisions, contained in Section D, envisage a different reallocation mechanism. They are sub-divided into reallocation depending on:
 - a) Qualification in the same boat class over two distances at the World Championships, and
 - b) Qualification in different boat classes at the World Championship.
- In the 2015 World Championship, the 4 K2 1000 m athlete quota places available for reallocation resulted from qualification of athletes in two different boat classes (K2 and K4). Thus, the set of rules on qualification in different boat classes would apply:

Qualification in different boat classes at Continental Qualification Events

An athlete who qualifies more than one (1) athlete quota place at the Continental Qualification Event in different boat classes (i.e. K1, K2 or C2 and C1) will be attributed only one (1) athlete quota in the largest qualified boat class. The remaining athlete quota place would be reallocated to the next best ranked NOC not yet qualified using the following procedure:

- i) If two (2) athlete quota places are available from team boats in the same gender and category (for example: Men's Kayak, Canoe or Women's Kayak) then the places will be added together and given to the next best ranked NOC not yet qualified in that category (1000m distance for men and 500m for women).
- ii) If one (1) athlete quota place is available from team boats then the reallocated athlete quota place will be used to fill a team boat from the next best ranked NOC not yet qualified in that category where an athlete quota place is required within the same class and gender (for example: Men's C2, Men's K2 or Women's K2) to complete a boat quota, starting with the largest distance.
- iii) If the athlete quota place is unable to fill a team boat following the procedure outlined above then the place will be attributed to the next best ranked NOC not yet qualified in the single events (i.e. K1 Men, C1 Men, K1 Women) in the same category and distance from which the athlete quota place came from.

- The First Appellants hold that sub-paragraph (i) would apply if there were only two athlete quota places available from team boats; sub-paragraph (ii) would apply if there was a single athlete quota place available from team boats; and sub-paragraph (iii) would apply by default in the event that the single athlete quota place cannot fill a team boat quota.
 - In the present case, there were 4 athlete quota places available for reallocation from team boats (not two nor one). The Appellants thus hold that none of the sub-paragraphs of the Specific Reallocation Provisions are applicable. Instead, the 4 athlete quota places available for reallocation must be allocated according to the General Reallocation Provision.
 - Hence, according to the General Reallocation Provision, the 4 K2 1000 m athlete quota places available for reallocation should be reallocated to the next best ranked NOCs not yet qualified in the same event. The next two best ranked NOCs in the K2 event being (7) Lithuania and (8) Italy.
80. Secondly, regarding the interpretation principles that must be applied in the interpretation of the Qualification System Rules, they argue that the following principles must be taken into consideration:
- The literal meaning of the words - they claim that the ICF interpretation is contrary to the literal meaning of sub-paragraph (i) of the Specific Reallocation Provision since it does not provide the option of adding together the 4 K2 1000 m athlete quota places for reallocation and reallocate them to a single K4 1000 m boat place but only refers to situations where two (and only two) athlete quota places are available.

- The historical background - qualification in previous Olympic Games has never provided for upwards reallocation from K2 to K4. The principle was that the athlete quota places from a given event were to be allocated within that event to the extent possible and, if not, then downwards. Reference is made to the 2012 London Olympic Games and the 2008 Beijing Olympic Games.
- The regulatory context:
 - The Qualification System Rules provide for a total number of athlete quota places and boat quota places for the 2016 Rio Games. The upward reallocation of K2 athlete quota places to K4 would lead to the total number of available quota places in the OQS to be exceeded. On the contrary, this would never be the case if the 4 K2 Athlete Quota Places available for reallocation were allocated within K2.
 - Both prioritizing the reallocation to K4 and placing a cap on the reallocation of K2 athlete quota places within K2 are contrary to the published intention and policy imperatives of the ICF to reduce K4 quota places and increase K2 places. Firstly, in a PowerPoint presentation of the ICF entitled “The Olympic qualification for OG 2016 in Rio in Canoe Sprint” the ICF envisaged reducing the quota places for K4 1000 from 40 athletes and 10 boats to 36 and 9, respectively. Conversely, it envisaged that K2 1000 m athlete quota places would be increased from 20 athletes and 10 boats to 22 and 11, respectively. This proposed change was stated to be in the interests of the principle of universality in the OQS. An upwards allocation to K4 favours the established federations that have strength in depth, which is contrary to the principle of universality.
 - An earlier draft of the OQS of December 2013 left absolutely no doubt that sub-paragraph (i) of the Specific Reallocation Provisions was intended to reallocate K2 athlete quota places within K2. Furthermore, they claim that the wording “starting with the largest boat class” was introduced at the very end of the drafting process without sufficient consultation or explanation.
 - Reference is made to the correspondence of the ICF bodies, the Executive Committee and the Board of Directors in the drafting process of the Qualification System Rules. From the extracts exposed they argue that it was clear that the K2 athlete quota places would be reallocated within K2.
- The principle of *lex specialis derogat generali* - the First Appellants hold that the OQS does not address the interrelationship between the General Reallocation Provision and the Specific Reallocation Provisions. As a result, they argue that on the basis of the *lex specialis derogat generali*, the Specific Reallocation Provision apply to the factual circumstances that they address whilst the General Reallocation Provision shall apply to circumstances that are not caught by the former.
- The principle of *contra proferentem* - due to the unclear wording of the OQS and the lack of specification as to how the General Reallocation Provision and the Specific Reallocation Provision interact, they insist that the undeniable ambiguity must be resolved in favour of

the interpretation proposed. Moreover, the First Appellants maintain that in any case regulations must be construed against the legislator since the non-drafting party should not be prejudiced by the drafting inadequacies of the drafting party.

- The principle of fairness - in the event that the previous interpretation principles are discarded, the First Appellants call for the Panel to consider that it would be contrary to the principle of fairness for the Italian (M) K2 1000 m boat not to qualify for the 2016 Rio Games.
- The principle of legitimate expectations - the ItCF and CONI believed that the rules provided that K2 athlete quota places would be reallocated, if possible, within K2. The athletes concerned believed in good faith that they had qualified for the 2016 Rio Games. Thus, they celebrated the victory at the 2015 World Championships and they were congratulated by various teams. The qualification of the (M) K2 1000 m boat was a significant achievement for the athletes concerned. Overall, the decision of the ICF to allocate K2 athlete quota places to K4 came as a surprise.

81. As a result, the ItCF and CONI request that the Panel rule that:

1. The appeals of the Italian Federation and CONI are admissible.
2. The decision of the ICF not to (re)allocate to CONI two athlete quota places in respect of the Italian men's K2 1000 m boat that finished eighth in the 2015 WC is set aside.
3. CONI receives two athlete quota places in respect of the Italian men's K2 1000 m boat that finished eighth in the 2015 WC or is otherwise qualified for the men's K2 1000 m event at the Rio Games.
4. In the alternative to request for relief 3. above, the case is referred back to the ICF with appropriate directions.
5. The Respondents shall bear the entirety of the arbitration costs.
6. The Appellants are granted an award in respect of their legal costs and other expenses.

2. *Second Appellants: British Olympic Association (BOA) & British Canoeing (BC)*

82. The subject matter of the Appeal Brief regards the decision to reallocate the 8 of the 10 (W) K athlete quota places, freed up (by Hungary, Serbia, Germany, Poland and China) from (W) K2 500 m, to the French and Danish (W) K4 500 m boats. According to the British interpretation of the OQS, all 10 athlete quota places should have been reallocated to the next 5 ranked boats not yet qualified in the (W) K2 500 m. Overall, they argue that the reallocation should be to (7) Denmark, (8) Romania, (9) Great Britain, (10) Belarus and (11) Kazakhstan. However, Belarus in any case had already won athlete quota places in the (W) K4 500 m, so the reallocation would extend to (12) Austria.
83. Firstly, regarding the interpretation of the reallocation provisions of the OQS the Second Appellants assert that:

- As outlined by ItCF and CONI, there is a General Reallocation Provision and a Specific Reallocation Provisions.
 - The arguments as to when the General Reallocation Provision applies and when the Specific Reallocation Provisions apply are applied analogically to the case of reallocation of (W) K2 500 m.
 - In the present case, since there were 8 of the 10 athlete quota places available for reallocation from team boats (not two nor one), the Second Appellants hold that none of the sub-paragraphs of the Specific Reallocation Provision are applicable. Instead, the 8 athlete quota places available for reallocation must be allocated according to the General Reallocation Provision.
 - Hence, according to the General Reallocation Provision, the 10 (W) K2 500 m athlete quota places available for reallocation should be reallocated to the next best ranked NOCs not yet qualified in the same event. The next five best ranked NOCs in the K2 event being (7) Denmark, (8) Romania, (9) Great Britain, (10) Belarus and (11) Kazakhstan. However, since Belarus had already won athlete quota places in the (W) K4 500 m, the reallocation would necessarily extend to (12) Austria.
84. Secondly, regarding the interpretation principles that must be applied in the interpretation of the OQS, in line with the ItCF and CONI and applied analogically. For ease of reference, the relevant principles as argued by the Second Respondents are recalled:
- The literal wording of the rule.
 - The regulatory context.
 - The principle of *lex specialis derogat generali*.
 - The principle of *contra proferentem*.
 - The principle of fairness.
 - The principle of legitimate expectations.
85. Apart from the above, supporting the arguments raised by the First Appellants' appeal, the Second Appellants raise two additional issues in regard to the interpretation principles that must be applied in the interpretation of the Qualification System Rules:
- The underlying purpose of the rule - the Second Appellants argue that where words of a rule in question could bear more than one possible interpretation, the Panel should consider which of the competing interpretations is more consistent with the underlying purpose of the rule.
 - The illogicality - the Second Appellants state that rules must be construed in a way that avoids illogical or absurd results, as would happen in this case should the ICF's interpretation be upheld.

86. Consequently, the Second Appellants request the Panel to rule the following:

1. The ICF's decision to offer eight of the ten unused athlete quota places from the WK2 event at the 2015 ICF Canoe Sprint World Championships to the French NOC and the Danish NOC, to be used to enter boats in the WK4 event at the Rio Games, was an error and is set aside.
2. Instead, in accordance with the ICF OQS, properly interpreted, those eight unused athlete quota places from the WK2 500 m event at the 2015 ICF Canoe Sprint World Championships are to be offered (two each) to the NOCs for Denmark, Kazakhstan, and Austria respectively, to be used to enter boats in the WK2 event at the Rio Games (alongside Russia and Romania).
3. Alternatively, in accordance with the principle of fairness, the two athletes who contested the WK2 500 m race for GB in Milan shall be permitted to compete in that event for GB in Rio.
4. The Respondents to pay all of the CAS arbitration costs in these proceedings (and to reimburse the BOA/BC for the amount that they have advanced in respect of those costs).
5. The Respondents to pay an appropriate contribution towards the legal costs and expenses that the BOA/BC have incurred in these proceedings.
6. The BOA/BC also respectfully requests that the CAS Panel grant them such other and further relief as the CAS Panel sees fit.

B. Respondents

1. *First Respondent: International Canoe Federation (ICF)*

87. Regarding the interpretation of the reallocation provisions of the OQS set forth by the Appellants, the ICF argues:

- The scope of the authority of the ICF - the ICF and the IOC have jointly adopted the OQS for the 2016 Rio Games based on certain needs and interests of the sport, and as the governing body these cannot be subject to challenge.
- The balancing of different considerations of the needs and interests in the sport - in line with the previous argument, it is a matter for the ICF to decide how it evaluates the needs of the sport, how it decides the best means to achieve them, and what balance to strike in the formulation of the relevant rule. In this regard, the underlying purpose of the OQS was to increase the number of K4 boats and with that the number of K2 boats through the doubling up option. Therefore, if the ICF's reallocation is consistent with the OQS and with its underlying purpose, said reallocation cannot be challenged.
- The artificial division - the Appellants seek to characterise the provisions at page 4 of Section D as a Specific Reallocation Provision in apparent contradiction to what they seek

to characterise as a General Reallocation Provision in the second paragraph of the first subsection of Section D which cross-references to Section F. However, it is clear that Section F deals with the reallocation of quota places that were “unused” because an NOC had “not confirmed” or “declined” them under Section E. According to the First Respondent, such division is artificial and Section F should have no influence in this arbitration.

88. Furthermore, in line with the interpretation of the reallocation provisions of the OQS, the ICF provides the following explanation for the reallocation it carried out:

- The ICF had to apply the OQS to two instances relevant to this arbitration:
 1. Following the 2015 World Championships, 4 (M) K athlete places fell to be reallocated because in the (M) K2 1000 m, Slovakia finished 4th and Belarus finished 5th, but those 4 paddlers also won athlete quota places for their NOCs in the (M) K4 1000 m, in which Slovakia finished 1st and Belarus finished 8th.
 2. Following the 2015 World Championships, 10 (W) K athlete places fell to be reallocated because in the (W) K2 500 m, Hungary finished 1st, Serbia finished 2nd, Germany finished 3rd, Poland finished 4th and China finished 6th, but those 10 paddlers also won athlete quota places for their NOCs in the (W) K4 500 m, which they all qualified in.
- In both instances the paddlers had qualified “in different boat classes” because they had qualified in both boat class K2 and boat class K4 at the 2015 World Championships.
- As a result, the provisions in Section D on the bottom half of page 4 of the Qualification System Rules, under the heading “Qualification in different boat classes at the World Championships” applied to each situation. The relevant provision is found below:

Qualification in different boat classes at the World Championship

An athlete who qualifies more than one (1) athlete quota place at the 2015 ICF Canoe Sprint World Championships in different boat classes (i.e. K1, K2, K4 or C2 and C1) will be attributed only one (1) athlete quota in the largest qualified boat class (regardless of how many places that athlete qualifies in other events). The remaining athlete quota place would be reallocated to the next best ranked NOC not yet qualified using the following procedure:

i) On completion of the 2015 Canoe Sprint World Championships, should two (2) athlete quota places be available from team boats in the same gender and category (for example: Men's Kayak, Men's Canoe or Women's Kayak) then the places will be added together and given to the next best ranked NOC not yet qualified in that category (1000m distance for Men and 500m for Women), starting with the largest boat class.

ii) On completion of the 2015 Canoe Sprint World Championships, if one (1) athlete quota place is available from team boats then the reallocated athlete quota place will be used to fill a team boat from the next best ranked NOC not yet qualified in that category where an athlete quota place is required within the same category and gender (for example: Men's Kayak, Men's Canoe or Women's Kayak) to complete a boat quota, starting with largest distance and largest boat.

iii) If the athlete quota place is unable to fill a team boat following the procedure outlined above then the place will be attributed to the next best ranked NOC not yet qualified in the single events (i.e. K1 Men, C1 Men, K1 Women) in the same category and distance from which the athlete quota place came from.

- In each instance, according to the first (unnumbered) paragraph under the heading, the ICF “attributed” each paddler’s “one (1) athlete quota” place to “the largest qualified boat class”, namely (M) K4 and (W) K4 respectively.
- Then, the ICF applied the three sub-paragraphs numbered (i) to (iii) to reallocate the available places that arose as a consequence. In this case, there was no need to go beyond subparagraph (i) in either instance because of the number available of spare places was even, and so it never came down to one available or spare place.
- In each instance there were, for the purposes of sub-paragraph (i) *“two athlete quota places ... available from team boats in the same gender and category”*:
 1. In gender (M) category K there were *“two athlete quota places ... available from”* the Slovakian K2 1000 m “team boat” and another two athlete quota places from the Belarussian K2 100 m team boat.
 2. In gender (W) category K there were *“two athlete quota places ... available from”* the Hungarian K2 500 m “team boat”, another two athlete quota places from the Serbian K2 500 m team boat, another two athlete quota places from the German K2 500 m team boat, and another two athlete quota places from the Chinese K2 500 m team boat.
- Therefore, in each instance, *“the places [were] added together”* as required by sub-paragraph (i), producing 4 available (M) K places and 10 available (W) K places.

- Consequently, in each instance, the ICF added together the places that fell to be available and were “*given to the next best ranked NOC not yet qualified in that category* [1000 m for Men and 500 m for Women] *starting with the largest boat class*”:
1. In gender (M), the “largest boat class” was K4. Thus, as there were exactly 4 available places “added together”, they could be reallocated “to the next best ranked NOC not yet qualified” in gender (M), category K, largest boat class K4. In this case it was Russia, which had finished in 9th in the (M) K4 1000 m at the 2015 World Championships, but had lost the place to which it would otherwise have been entitled on merit, due to the operation of the Continental Rule. The reallocation in this instance was now complete in one step.
 2. In gender (W), the “largest boat class” was also K4. However, in this case, there were more than 4, actually 10, available places “added together” that could be reallocated “to the next best ranked NOC not yet qualified” in gender (W), category K, largest boat class K4. This was done in three reallocations:
 - First of all, 4 of the ten places were added together and reallocated to France which had finished in 8th place in the (W) K4 500 m at the 2015 World Championships, but had lost the place to which it would otherwise have been entitled on merit, due to the operation of the Continental Rule. The reallocation of these 4 out of the 10 available (W) K places left 6 of them still available.
 - Therefore, since there were still more than 4 places available, another 4 places were added together and reallocated “to the next best ranked NOC not yet qualified” in gender (W), category K, largest boat class K4, which was now Denmark which had come 10th in the (W) K4 500 m, but just like France had lost the place to which it would otherwise have been entitled on merit, due to the operation of the Continental Rule. The reallocation of a total of 8 out of the 10 available (W) K places left 2 of them still available.
 - Lastly, there were only 2 available (W) K places left. This was not enough for another (W) K4 boat, “the largest boat class” which requires four places. Therefore, having started the reallocation process with the largest boat class, and finding it no longer possible to reallocate places there, it was now necessary to move to the second largest boat class, namely (W) K2. Since there were 2 available places left, they could be reallocated “to the next best ranked NOC not yet qualified” in gender (W), category K, boat class K2. In the normal course it would have been reallocated to Denmark, which had finished in 7th place in the (W) K2 500 m. However, those Danish paddlers had also qualified in through the (W) K4 500 m by virtue of the places just allocated, in other words, in the second reallocation. Therefore, the Danish NOC was not “the next best ranked NOC not yet qualified”, it was Romania which had finished in 8th place in the (W) K2 500 m.

89. The reallocation in this instance was now complete after three steps. In neither instance there was a need to go on to sub-paragraph (ii) which regulates what would happen if there was only 1 available place left over.

90. Regarding the interpretation principles that must be applied in the interpretation of the OQS, the Second Appellants distinguish:

a) The principles that must be applied in the present case.

The OQS in this case operates as quasi-legislation and one should thus favour the analogical application of the rules of interpretation for statutes. Therefore, the following rules of interpretation are applicable with respect to regulations of (Swiss based) international federations: (i) the literal interpretation; (ii) the systematic interpretation; and the (iii) teleological interpretation.

- The literal meaning of the words - they provide that the reallocation by the ICF followed the exact words in the relevant provision.
- The underlying purpose of the rule:
 - The relevant intention is the intention of the governing body and not the intention of the athletes to which the rule enacted by the governing body will apply.
 - The implicit complaint made by the Appellants is in reality that the ICF was wrong in determining the underlying policy that the sport is best served by qualifying as many K4 boats as possible, although their appeals are framed as challenges to the construction and application of the rules. Therefore, if the purpose behind the rules was indeed to qualify as many K4 boats as possible, the First Respondent considers that the Appellants' case must fail, as the determination that to do so best served the interests of the sport as a whole is a matter for the ICF.
- The principle of worldwide application of the rules - the rules and regulations of an international sports governing body, such as the ICF, govern national federations and athletes from all around the world, who are subject to varying legal systems. This militates in favour of a sensible and pragmatic construction, consistent with reality, rather than an artificial and subjective construction as proposed by the Appellants.

b) The principles that cannot be applied in the present case:

- The principle of *lex specialis derogat generali* - is not applicable in this case as it is not a principle of interpretation under Swiss law and, in any case, Section D is not a special provision to Section F.
- The principle of *contra proferentem* - contrary to the Appellants' assertions, no basis exists for a *contra proferentem* construction since there is no ambiguity and the application of this principle would go against other national federations and NOCs, not only against the ICF.
- The principle of fairness - it is not contrary to the principle of fairness not to qualify the Italian (M) K2 1000 m boat or the British (W) K2 500 m boat. If the Panel finds that the ICF's interpretation was correct, there is no unfairness in rejecting qualification of the teams that do not meet the mark. Instead, the principle of fairness is applicable to the Russian, French, and Danish team boats which would otherwise lose the quota places to which they are entitled.
- The principle of legitimate expectations - the First Respondent argues that a breach of legitimate expectations can be a cause of action in exceptional circumstances but it is not a rule of interpretation under Swiss law and thus is irrelevant for the purpose of the interpretation principles of the reallocation provisions.
- The illogicality - what is logical can only be determined by reference to the rule's objective purpose, in other words, the purpose of the governing body and not by reference to the subjective purpose that a disappointed party might wish to portray.

91. As a result, overall, the ICF requests that the Panel decides in an Award:

167. *It is denied that either Appellant is entitled to the Relief sought or any relief.*

168. *The ICF respectfully asks CAS to rule that:*

168.1 *The appeal filed by Federazione Italiana Canoa Kayak and Comitato Olimpico Nazionale Italiano is dismissed;*

168.2 *The appeal file filed by British Canoeing and British Olympic Association is dismissed;*

168.3 *Federazione Italiana Canoa Kayak, Comitato Olimpico Nazionale Italiano, British Canoeing and British Olympic Association shall bear the costs of the present arbitration and be concerned to pay a significant participation towards the ICF's costs.*

2. Second Respondent: Russian Olympic Committee (ROC)

92. Regarding the interpretation of the reallocation provisions of the Qualification System Rules, the Second Respondent upholds the interpretation of the ICF.
93. Furthermore, it raises an issue of abuse of right by the Appellants who never before the World Championship challenged the OQS, even though it was available to all ICF members from July 2014. There was a period of over a year in which the Appellants failed to take measures in order

to clarify the interpretation of the relevant provisions. Moreover, they consider that the Appellants' inaction during that time demonstrates that the reallocation provisions were clearly understood. Furthermore, they claim that the only way for the Appellants to defend their rights would have been to resolve the dispute before the start of the 2015 World Championships. Consequently, the Appellants abused their right to challenge the system and the Decision Under Appeal in due time.

94. Regarding the interpretation principles that must be applied in the interpretation of the OQS:
- The principle of *contra proferentem* - the Second Respondent denies the application of this principle since the OQS is clear, comprehensive and does not give rise to a dual interpretation.
 - The principle of fairness - even though the Russian athletes competing in the (M) K4 1000 m ranked in 9th place, they were not allocated athlete quota or boat quota places due to the Continental Rule. The OQS is a result of a compromise in which many factors are taken into consideration and, consequently, the reallocation provisions are valid and fair.
95. Finally, the ROC respectfully asks the Panel to rule the following:
1. *The Appellants' claims shall be rejected by the CAS Panel in entirety;*
 2. *The ICF's decisions to offer four unused athlete quota places from the MK2 event at the 2015 ICF to the Russian NOC, to be used to enter boats in the MK4 and to offer eight of the ten unused athlete quota places from the WK2 event at the 2015 ICF to the French NOC and the Danish NOC, to be used to enter boats in the WK4, shall be upheld by the CAS Panel;*
 3. *The Appellants have to pay an appropriate contribution towards the legal costs and expenses that the ROC has incurred in these proceedings.*

3. Third Respondent: Russian Canoe Federation (RCF)

96. Regarding the interpretation of the reallocation provisions of the OQS:
- The actual interpretation of said rules are not under dispute, but rather the actual allocation of quota and boat places.
 - The division of the reallocation provisions into General Reallocation Provisions and Specific Reallocation Provisions is completely artificial and subjective. The interpretation that must be upheld is the one provided by the ICF.
97. Regarding the interpretation principles that must be applied in the interpretation of the OQS:
- The principle of due diligence - the final version of the OQS was published on 4 July 2014: a year before the Decision Under Appeal of 6 September 2015. The Appellants had over a year before the 2015 World Championships in order to challenge the provisions of the OQS. Therefore, the Appellants failed to apply the principle of due diligence.

- The regulatory context - various points are made:
 - The drafting process of the ICF is inherent in the development of society and sport. However, the drafting process cannot in any case be considered as an argument in order to declare the final version invalid.
 - Regarding the calculations presented by the Appellants in terms of the total number of athlete quota places and boat quota places for the 2016 Rio Games, these must be discarded as they were a mere starting point before reallocation.
 - The principle of *contra proferentem* - there is no way that this principle can be invoked since the Appellants should have challenged or questioned the provisions of the OQS in due time had there been any uncertainties, ambiguity or contradiction in said rules.
 - The principle of fairness - this principle has not been interpreted correctly by the Appellants. The Third Respondent holds that this principle can only be applied in the field of sport when teams from 86 nations take part in a World Championship in equal conditions and some contenders win places over others.
98. Finally, the Third Respondent contests the argument made by the Second Appellants that the Russian athletes believed that they had not qualified in the (M) K4 1000 m and hold that athletes lacked sufficient information to do the reallocation calculations. In any case, athletes' reactions do not gauge the understanding of the RCF.
99. As a consequence of the above, the RCF requests that the Panel:

The above mentioned facts and conclusions allow the Respondent to ask the respective Panel to leave the Appeals without satisfaction and to refer all the arbitration costs to the Appellants.

4. Fourth Respondents: Danish National Olympic Committee (DNOC) & Danish Canoe Federation (DCF)

100. Firstly, regarding the interpretation of the reallocation provisions of the OQS, the Fourth Respondents uphold the interpretation of the ICF and thus stand by the following arguments:
- The scope of the authority of the ICF - the ICF, within the scope of its authority, properly followed and implemented the procedure and criteria established in the OQS when allocating the quotas for the 2016 Rio Games following the 2015 World Championships.
 - The balancing of different considerations of the needs and interests in the sport - the balancing of different considerations in terms of the needs and interests in the sport, especially in terms of quality vs. universality, is a sporting policy matter. The allocation to the largest boat class, thereby boosting the K4 events, is in full compliance with the underlying sporting policies since it combines: maximizing the doubling up option, the splitting of quotas and the Continental Rule. Moreover, they recall that the Danish (W) K4 500 m boat finished in 10th place which would in fact make them qualify for the 2016

Rio Games based on their merits on water. However, they were not allocated athlete or boat quota places due to the application of the Continental Rule.

- The artificial division - the division of the reallocation provisions into General Reallocation Provisions and Specific Reallocation Provisions is completely artificial and arbitrary. The OQS cannot be retrospectively challenged on the basis of this construction.
- The challenge in due time - if the Appellants did, in fact, find that the OQS were unclear or ambiguous in terms of the reallocation process then they should have consulted the ICF closer to the publication of the provisions in July 2014 and not with one year's delay. Therefore, the Fourth Respondents believe that as a matter of principle, the very language of the provisions cannot be challenged at this late stage according to Article R49 of the CAS Code. In other words, it should have been done within the 21-days time limit following the publishing of the final version.

101. Secondly, regarding the interpretation principles that must be applied in the interpretation of the OQS:

- The literal meaning of the words - it follows from the literal meaning of the words of the OQS that the spare athlete quota places stemming from athletes' qualification in different boat classes must be reallocated using the procedure in subparagraphs (i) to (iii) of Section D. In addition, as a counterclaim to the Appellants' argument on the fact that the subparagraph (i) only applies when exactly 2 athlete quota places fall to be reallocated, then reallocation would per definition be to K2 and the inclusion of the requirement of "starting with the largest boat class" would make no sense.
- The regulatory context:
 - When drafting and implementing the Qualification System Rules it is for the ICF, not the CAS nor the Appellants, to define how to best pursue the needs and interests of the sport and of the 2016 Rio Games.
 - The internal correspondence for the ICF bodies actually demonstrates that the early proposals as to reallocation to K2 were deliberately and clearly dismissed in favour of upwards reallocation to K4, thereby maximizing doubling up and, consequently, securing the quality in both K2 and K4.
 - It is also claimed that the Appellants failed to inform the Panel of the context in which the PowerPoint presentation of the ICF entitled "The Olympic qualification for OG 2016 in Rio in Canoe Sprint" was given. First of all, the presentation was given at a meeting in early September 2013 with representatives from the Canoe Sprint Committee and the national federations following the 2013 World Championships. Secondly, at the meeting, another PowerPoint presentation was given entitled "ICF Olympic Future". In other words, no binding decisions were taken as to the construction of the final version of the OQS. At the follow-up of the meeting, both PowerPoint presentations were forwarded, quite informally, by email, to the attending representatives. Overall, the Fourth Respondents argue that it is:

- Misleading when the Appellants describe the outcome of these meetings as “policy imperatives” or “published intention” of the ICF, when the final version of the OQS was published a year later, and
 - It is in itself a contradiction to argue both in favour of the formally binding nature of the presentation while at the same time accepting the multiple ideas and proposals that are found in the presentation and not all of them found their way into the OQS.
- The underlying purpose of the rule:
- The clear purpose of the disputed section of the OQS is to exhaustively regulate the reallocation of spare athlete quota places following the 2015 World Championships, regardless of the total number of quotas that are to be reallocated.
 - The upwards reallocation fulfils the clear purpose of the OQS, inter alia, to increase both quality, participation in both K4 and K2, and thus, universality, as well as spectator interest in respect of the team boat events at the 2016 Rio Games.
- The principle of *contra proferentem* - it would result in an absurd situation whereby the interpretation of the rules in question would vary depending on which of the two opposing parties felt adversely affected by the challenged Decision.
- The principle of legitimate expectations - it is well known in the world of canoeing that K4 is the main gateway to the Olympics. Therefore, it came as no surprise that the ICF (and the IOC) focused on the K4 events when implementing the OQS, while at the same time maximizing the doubling up, altogether with the result of optimizing quality in both K4 and K2. In addition, if the expectations were in fact that the spare athlete quota places were to be reallocated to K2, then Kazakhstan and Lithuania, among others, would have followed the example of the Appellants and challenged the allocation of quotas for the 2016 Rio Games.
- The illogicality - what is logical with regards to the OQS largely depends on the sporting policies underpinning it and it is for the governing body to decide on such matters.
- The principle of fairness - the general tendency to claim the principle of fairness and the principle of *contra proferentem* is doing these fundamental principles injustice. The Fourth Respondents assert that the present case concerns the simple application of the OQS and not severe disciplinary sanctions, procedural injustice or undue process, which on the contrary are situations that call for the application of these principles.
102. Thirdly, regarding the costs of the proceedings they ask that if CAS rule in favour of the Appellants, thereby depriving the Danish athletes in the (W) K4 500 m the possibility of competing at the 2016 Rio Games, the following is taken into consideration:
- They were not the drafters of the Qualification System Rules, these were drafted by another party (the ICF).

- They have, from the outset, been reluctant to intervene in the proceedings but felt obliged to do so in respect of the Danish athletes.
- They have tried to limit the costs of the proceedings.
- They believe that they have acted with reason and decency by not challenging the ICF's jurisdiction.

103. As a result, the DNOC and DCF request the CAS to:

1. *Dismiss the appeal.*
2. *Order the Appellants to pay the costs of these proceedings.*
3. *Order the Appellants to pay an appropriate contribution towards the costs and expenses incurred by the DNOC and DCF in these proceedings.*

5. Fifth Respondents: French National Olympic Committee (CNOSF) & French Canoe Federation (FFCK)

104. Regarding the interpretation of the reallocation provisions of the OQS, as the rest of the correspondents the Fifth Respondents also uphold the interpretation of the ICF and thus stand by its arguments. Furthermore, the Appellants' appeal is late as the final version of the OQS was published in July 2014:

105. Regarding the interpretation principles that must be applied in the interpretation of the OQS:

- The literal meaning of the words - the extraordinary process of reallocation does not apply in this case, since they only apply when there are non-confirmed or declined quota places. The ordinary process of reallocation of quota places is clear and unambiguous. Moreover, the Fifth Respondents are of the opinion that if the drafters of Section D of the Qualification System Rules would have actually intended to prioritize the same boat class they would have done so explicitly, in such a way that instead of stating "starting with the largest boat class" it would state "in the same event".
- The principle of *contra proferentem* - the doctrine of this principle is inapplicable in the present proceedings. The argument lies in the fact from their point of view this principle that is embedded in basic contract law whereby counterparties have unequal bargaining powers, which is not the case here, since the OQS is imposed on all NOCs equally.
- The principle of fairness - depriving qualified athletes of their lawful right to compete in the 2016 Rio Games would be unfair to said athletes.
- The illogicality - the issue here is not whether the reallocation provisions are logical or illogical but rather whether they were correctly applied as was intended and drafted by the ICF.

106. Thirdly, regarding the costs of the proceedings, in similar terms to the ones expressed in DNOC and DCF's Answer, the Fifth Respondents ask CAS to take into consideration the following:

- They did not take part in the drafting of the OQS;
- They did not interfere with the Decision;
- The present proceedings were imposed on the FNOC and FCF who had no choice but to intervene in order to preserve their rights and interests.

107. Consequently, the Fifth Respondents request that:

For these reasons, the appeal shall be dismissed.

(...)

thus this Panel shall order the Appellants to pay the costs of these proceedings and, regardless of the outcomes of this appeal, this Panel shall rule that all incurred fees (including legal fees), costs and expenses in connection therewith be reimbursed to FNOC and FCF.

V. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

108. Pursuant to Article R57 of the CAS Code:

An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

109. In this case, pursuant to Article 47 of the ICF Statutes:

A party to a dispute has the right to appeal against a decision of the Court of Arbitration of the ICF. Any appeal to a body outside the ICF shall be made only to the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland).

110. Pursuant to Article 61.2 of the Olympic Charter:

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, in accordance with the Code of Sports-Related Arbitration.

111. In principle, the Decision Under Appeal should have been first appealed to the Court of Arbitration of the ICF. All Parties, however, had accepted that due to the urgency of the proceedings, this internal remedy was waived, allowing the Appellants to directly resort to CAS. In agreeing that all of the Appellants' and Respondents' cases be heard in the same CAS case and signing the Order of Procedure all Parties accepted that the dispute would be solved by CAS.

112. The Panel thus considers that the jurisdiction of CAS is confirmed.
113. The Decision Under Appeal was taken on 6 September 2015. The Appeal by the First Appellants was filed on 28 September 2015, within the time limit provided.
114. Pursuant to Article R58 of the CAS Code:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

115. The ICF is an international sports body domiciled in Switzerland. Thus, Swiss Law shall apply. As argued by the Parties, however, when applying Swiss Law, the Panel shall give due consideration to the international nature of the ICF and its members.

VI. MERITS OF THE DISPUTE

A. Power of review

116. Pursuant to Article R57 of the CAS Code:

The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

117. The Panel has full power of review over the ICF's decision, which has allowed a complete appeal to CAS in its own statutes. Whilst the ICF may have discretion in applying its rules and regulations, such application is subject to full review by CAS, which can decide if the decisions taken by the ICF are correct.
118. The ICF's policy decisions when making the rules are not subject to CAS' control. However, once the rules are set the ICF is bound to make adequate application and interpretation of them, both of which are subject to complete CAS scrutiny. In applying this scrutiny CAS will consider an objective interpretation of the rules, evaluating principally the text and purpose of the rules.

B. Interpretation of the OQS

1. The interplay between Sections D and F of the OQS

119. The first issue the Panel needs to address is whether the OQS contains a general and a specific reallocation provision, as argued by the Appellants or just two different reallocation provisions for different scenarios.
120. The Appellants hold that Section F of the OQS contains a General Reallocation Provision, which applies in all cases where Section D is not applicable. The Appellants hold that due to its

wording, Section D is applicable to the situation where 1 or 2 athlete quota places become available. All other cases are subject to Section F. Upon review of the Parties' arguments and the evidence in the file, the Panel concludes that Section F of the OQS cannot be considered to be a General Reallocation Provision.

121. Pursuant to Section D:

Qualification in different boat classes at the World Championship

An athlete who qualifies more than one (1) athlete quota place at the 2015 ICF Canoe Sprint World Championships in different boat classes (i.e. K1, K2, K4 or C2 and C1) will be attributed only one (1) athlete quota in the largest qualified boat class (regardless of how many places that athlete qualifies in other events). The remaining athlete quota place would be reallocated to the next best ranked NOC not yet qualified using the following procedure:

- i) On completion of the 2015 Canoe Sprint World Championships, should two (2) athlete quota places be available from team boats in the same gender and category (for example: Men's Kayak, Men's Canoe or Women's Kayak) then the places will be added together and given to the next best ranked NOC not yet qualified in that category (1000m distance for Men and 500m for Women), starting with the largest boat class.
- ii) On completion of the 2015 Canoe Sprint World Championships, if one (1) athlete quota place is available from team boats then the reallocated athlete quota place will be used to fill a team boat from the next best ranked NOC not yet qualified in that category where an athlete quota place is required within the same category and gender (for example: Men's Kayak, Men's Canoe or Women's Kayak) to complete a boat quota, starting with largest distance and largest boat.
- iii) If the athlete quota place is unable to fill a team boat following the procedure outlined above then the place will be attributed to the next best ranked NOC not yet qualified in the single events (i.e. K1 Men, C1 Men, K1 Women) in the same category and distance from which the athlete quota place came from.

122. Section F, on the other hand, provides:

2015 ICF Canoe Sprint World Championships

If an allocated quota place from the 2015 ICF Canoe Sprint World Championships is not confirmed by the NOC by the confirmation of quota place deadline or is declined by the NOC then the quota place will be reallocated to the next best ranked NOC in that event, not yet qualified. This process will be repeated until all places are allocated.

123. Section F is, unlike the reallocation procedure of Section D, quite clear and evidently refers to one very specific situation: where an athlete quota place becomes vacant because a NOC does not confirm the quota place it earned or declines it. In this situation, the OQS orders that the vacant quota places be reallocated to the next best ranked NOC in that same event.

124. Section F cannot be considered to be a General Reallocation Provision applicable to all reallocation situations with the exception of the very limited cases where strictly two or one quota places are freed, as the Appellants claim. Section F merely regulates one very specific situation which, in essence, is different to the reallocation of places due to one athlete earning various quota places. In fact, Section F would only apply after every reallocation is carried out and once the NOCs are given the opportunity to accept or decline the places earned.
125. Absent a “General Reallocation Provision”, Section D cannot, obviously, be considered to be a “Specific Reallocation Provision”. Section D, even in its poor and unclear drafting, must be understood to regulate all situations where one athlete earns various quota places and some have to be reallocated. In particular, as it is in the heart of this dispute, Section D must be understood to regulate all situations related to the “qualification in different boat classes at the World Championships”.
126. Furthermore, the Panel must note that Section F apart from not being directly applicable to the case at hand is also not applicable by analogy. Indeed, Section F regulates a different situation and at a different moment in time than the case at hand which, in fact, is more closely regulated by Section D.
127. The Panel is aware that a specific paragraph in Section D apparently refers to Section F (in fact, G) for the general reallocation of quota places:

The athlete quota place(s) will be given to the largest boat class and the remaining athlete quota place is reallocated using the unused athlete quota place process as outlined in section G. Reallocation of Unused Quota Places.

128. However, (i) the blatant contradiction between this provision and the literal terms and title of Section F; (ii) the clear wording of (at least) the title of the disputed clause in Section D; (iii) the late location of Section F in the OQS; and (iv) the mistype in this clause lead the Panel to conclude that the interpretation that is in best terms with the wording and systematic of the OQS is the one reached in this decision.

2. Analysis of Section D of the OQS

129. As already stated, the Panel finds that Section D of the OQS is poorly drafted and has no univocal meaning on how athlete quota places exceeding a total of 2 should be reallocated. Absent a clear interpretation that can be taken uniquely from the literal wording of the provision, the Panel must employ additional interpretation criteria to determine what its meaning should be.
130. In particular, the Panel’s interpretation, seeking for the objective meaning of the OQS shall consider:
 - (a) The ordinary meaning of the words. Even in the poorly drafted OQS this must be the starting point of the interpretation.

- (b) The regulation's objective and intended application, as determined by contemporaneous evidence. The Parties appear to agree on this criteria, by referring to the "*historical background and regulatory context*", the "*underlying purpose*" or the "*teleological interpretation*"⁸ of the rules.

131. As stated by the Panel in CAS 2009/A/1810 & 1811⁹:

The interpretation of the statutes and of the rules of a sport association has generally to be rather objective and always begin with the wording of the rule, which is the object of the interpretation. The deciding body will have to verify the grammatical meaning of the rule, looking at the ordinary meaning of the language used, at the syntax of the norm. Of course, the deciding body can take into account historical elements by identifying, if possible, the intentions of the association when establishing the rule at scrutiny. Based on a systematic analysis, the Panel shall determine that the interpretation given to the rules does fit into the context of the whole regulation (CAS 2008/A/1673, par. 33, p. 7).

132. The Panel first considers that, following from B.1 above, Section D of the OQS must be understood to regulate all situations related to the "qualification in different boat classes at the World Championships" and that Section F applies to very specific and distinct cases. As a consequence:

- (a) Section D, even considering its poor drafting, must be understood to encompass all scenarios where a quota place is freed as a consequence of an athlete earning qualification in different boat classes at the World Championships. Indeed, the Panel finds it impossible to hold that when drafting the OQS the ICF and the IOC, considering their joint expertise, decided to regulate exclusively the reallocation of 1 or 2 quota places and not any other number of places. It is indeed much more plausible to understand that although hidden behind very poor drafting the reallocation of more than 2 quota places is also included in Section D of the OQS and that reference to 2 quota places in fact refers to all situations where more than one or an even number of quota places are available. This, as will be seen below, is confirmed by contemporaneous documentation and the systematic interpretation of the OQS.
- (b) Rather than filling a *lacuna* in the OQS, the Panel must construe Section D to determine the way in which the reallocation of more than two athlete quota places should be carried out, as intended by the OQS.

133. At this stage, it is of interest to reproduce, once again, the text of the rules under dispute: Section D of the OQS and, in particular, the reallocation rules for qualification in different classes at the World Championships:

⁶ ItCF/CONI Appeal Brief, para. 29.2.
⁷ BOCA/BOA Appeal Brief, para. 3.5.
⁸ ICF Answer, para. 63.
⁹ CAS 2009/A/1810 & 1811, para. 45.

Qualification in different boat classes at the World Championship

An athlete who qualifies more than one (1) athlete quota place at the 2015 ICF Canoe Sprint World Championships in different boat classes (i.e. K1, K2, K4 or C2 and C1) will be attributed only one (1) athlete quota in the largest qualified boat class (regardless of how many places that athlete qualifies in other events). The remaining athlete quota place would be reallocated to the next best ranked NOC not yet qualified using the following procedure:

i) On completion of the 2015 Canoe Sprint World Championships, should two (2) athlete quota places be available from team boats in the same gender and category (for example: Men's Kayak, Men's Canoe or Women's Kayak) then the places will be added together and given to the next best ranked NOC not yet qualified in that category (1000m distance for Men and 500m for Women), starting with the largest boat class.

ii) On completion of the 2015 Canoe Sprint World Championships, if one (1) athlete quota place is available from team boats then the reallocated athlete quota place will be used to fill a team boat from the next best ranked NOC not yet qualified in that category where an athlete quota place is required within the same category and gender (for example: Men's Kayak, Men's Canoe or Women's Kayak) to complete a boat quota, starting with largest distance and largest boat.

iii) If the athlete quota place is unable to fill a team boat following the procedure outlined above then the place will be attributed to the next best ranked NOC not yet qualified in the single events (i.e. K1 Men, C1 Men, K1 Women) in the same category and distance from which the athlete quota place came from.

134. As already stated, a strictly literal approach is insufficient in order to solve the situation at hand, where more than two athlete quota places were freed up and were due for reallocation. In this regard, the Panel does not consider the Parties' arguments that the others' interpretation requires the addition of words that are not in the text to be valid. Indeed, that Section D makes reference to two athlete quota places and not "strictly" two or "more than" two should not affect the interpretation when considered under the light of a systematic approach to the OQS.
135. Absent a clear literal interpretation of Section D, the Panel must consider other means of interpretation in order to determine its meaning. In this regard, when interpreting rules established by international sporting bodies, the intent of the sporting body when drafting the rules (i.e. the sporting objectives that the rules reach for), inasmuch as it can be adequately ascertained, is a factor of important weight. When the evidence at hand helps determine the organization's intent at the time of drafting the rules, and this intent does not blatantly contradict the text of the norm, this should be taken into consideration. This, of course, does not mean that any *ex post* ascertainment of purpose by the international body can be considered to be an "authentic interpretation" of the rules, particularly when it is made once a dispute has arisen.
136. From the evidence in the file, particularly the contemporaneous documentation provided and the witness statement of Mr. Toulson where confirmed by it, the Panel concludes that the

purpose of the OQS, as intended by the ICF and IOC, is contrary to the Appellants' interpretation:

- (a) There is no "K2 Imperative" in the OQS, as claimed by both Appellants.

As the Appellants note, in a power point presentation titled "*The Olympic qualification OG 2016 in Rio in canoe sprint*", the ICF considered the possibility of reducing K4 quota places in favour of the K2 class, stating that:

Quota place will distributed to the K2 women 500m and K2 men 1000m and 200m to increase the former poor participation in double boats.

Additionally, an early draft of the OQS circulated in December 2013 provided specifically for this solution, providing the reallocation of vacant team quota places to the K2 500 m boat, at least in the women's category.

However, as explained by Mr. Toulson, and confirmed by the contemporaneous evidence available, this alternative was initially considered but later disregarded.

Indeed, in the ICF Board of Directors held in Lima, the ICF had already disregarded the removal of K4 places in favour of K2:

It was proposed to reduce K4 from 10 to 9 crews with 3 continents and 4 new K2s in the second qualification. The BoD voted against the proposal and instead insisted on 10 K4 teams and 4 continents.

When drafting qualification rules for the Olympics there are various, sometimes conflicting, principles at stake: maximizing quality of the competition (which benefits stronger more developed teams); universality (which may remove competitive teams in favour of weaker teams from unrepresented continents) or ensuring that the competition is appealing to spectators and sponsors (which would require that the maximum number of athletes and boats compete in each heat).

The ICF considered a first alternative, which maximized direct qualification to K2 in detriment of K4, in order to improve earlier problems found with low K2 participation. From the file, however, it appears that such alternative was disregarded, opting for reallocation to K4 places which in turn, through doubling up, would allow greater K2 participation. The effectiveness or adequateness of this decision may be debated and criticized, but is not an issue under the present appeal procedure nor can it be second-guessed by this Panel, which can only ascertain if such was the purpose of the rules and the intention of the entity when drafting them.

- (b) The non-assignment of K4 quota places in favour of K2 places does not in itself mean that Section D of the OQS reallocates vacant quota places upwards, by adding all available places and attributing them to K4 instead of K2. However, from the communications

and drafts in the file, the Panel concludes that this was, in fact, the purpose sought by the ICF when drafting the OQS:

- i. An early draft, dated 8 January 2014 already disregarded the allocation of places to K4 and, in the reallocation of “two athlete quota places” considered that the quota places would be “*added together and given to the next best ranked NOC not yet qualified in that category*”¹⁰.

It is important to remember that events are made up of “category” (K or C); “class” (number of athletes in a boat: 1, 2, or 4) and “gender” (M or W).

- ii. Mr. Istvan Vaskuti, First Vice President of the ICF made some comments on that same date. In particular, he suggested that the wording be changed from reallocation to the best ranked NOC in the “category” to “class”¹¹. As stated by the First Appellants, had this proposal been adopted it would have been a clear indication of the intention to reallocate to K2¹². However, as we will see below, this suggestion was never adopted and the term “category” was kept throughout the drafting process until the final draft. Indeed, this can be seen in the draft sent to the IOC on 10 January 2014¹³.
- iii. In this regard, on 3 April 2014, after more drafting rounds, the IOC sent specific comments to a final draft regarding whether certain places where “category” was mentioned should, however, refer to “class”¹⁴:

Regarding Canoe Sprint, and the use of category vs class, we can definitely make the changes to ensure that the text is coherent with the ICF rules. However, it is possible that there are a few more instances where the switch should be made? I've highlighted all additional instances where the word "category" was used, and in some cases have proposed a change. Could you please verify all the highlighted sections and confirm whether the term should stay or be modified? That way we will be certain that all required changes have been made.

(...)

i) On completion of the 2015 Canoe Sprint World Championships, should two (2) athlete quota places be available from team boats in the same gender and category (for example: Men's Kayak, Men's Canoe or Women's Kayak) then the places will be added together and given to the next best ranked NOC not yet qualified in that category (1000m distance for Men and 500m for Women).

- iv. In answer to the IOC, Mr. Toulson sent a new draft, the wording of which would end up being final. In his cover email, Mr. Toulson stated that “[b]aving discussed

¹⁰ ICF Answer, Exhibit 4, p. 171.

¹¹ *Ibid.* p. 180.

¹² *Cf.* ItCF and CONI Appeal Brief, para. 67.4.

¹³ ICF Answer, Exhibit 4, p. 201.

¹⁴ *Ibid.* p. 238 and 242.

*with our legal representatives and some teams this seems clearer and provides less scope to be contested*¹⁵. In the section that is relevant to this arbitration, not only was the reference to “category” kept, but clarification was provided by adding the words “starting with the largest boat class”¹⁶.

The Appellants contest that this wording was added in the last draft without previous consultation with ICF members. This, however, is irrelevant as (i) there is no evidence that the ICF had a duty to consult drafting with its members; and (ii) the final version was available to all parties from June 2014¹⁷ and there is no communication on the record of any party objecting to the OQS’ wording.

On the contrary, the fact that this wording was specifically added to make things “clearer and provide[s] less scope to be contested” has to receive proper consideration.

137. In essence, the Panel concludes that, despite its unclear drafting, the ICF’s intention when drafting the OQS and the purpose of the norm as shown by contemporaneous evidence is that Section D of the OQS (in particular the section titled “Qualification in different boat classes at the World Championship”) should be construed as follows:

- 1) An athlete who qualifies in more than one class in the same category will receive only one athlete quota place, corresponding to the place in the largest class in which he has qualified.
- 2) Once the World Championships finish and all available quota places are known, the reallocation procedure established in i), ii) and iii) is carried out, in that order.
- 3) First, i) would require that all available athlete quota places be “added together”.

The Panel understands that the only reasonable interpretation of the reference to “two (2)” athlete quota places is to understand that it refers to situations where the available places are even, thus allowing for the completion of team boats. This is confirmed by contemporaneous documentation, where the First Vice President of the ICF referred to item i) as “if the number of unused quota in the team boat classes within one category is even”¹⁸.

- 4) The total number of available quota places that are available, will be “given to the next best ranked NOC not yet qualified in that category ... starting with the largest boat class”. It is undisputed that the largest boat class in kayaking is K4. As a consequence, the available quota places shall be given to the next best ranked NOC in the kayak category starting with the K4 class. If the number of available quota places are insufficient to fill a complete K4 boat, they are then attributed to the next biggest team boat class (K2) until the available quota places are exhausted or the available number is uneven (1).

¹⁵ *Ibid.* p. 247.

¹⁶ *Ibid.* p. 251.

¹⁷ *Ibid.* p. 266.

¹⁸ *Ibid.* p. 219.

- 5) If the available quota places are exhausted, the reallocation process evidently stops.
 - 6) If there is one available quota place, section ii) is applied, allowing for reallocation to the next best ranked NOC that is lacking one athlete quota place to fill the largest team boat, starting with K4.
 - 7) If the procedure in ii) does not use the free quota place, then that quota place is given to the best ranked NOC in K1.
 - 8) Once all quota places are attributed, they are offered to the NOCs, who can accept them. If an NOC fails to accept a quota place or rejects it, Section F of the OQS applies. It appears logical that, in this case, reallocation is done directly within the same class and category as the number of then available places will be exactly the number of athlete quota places needed to fill a boat in the same class (i.e. if a NOC rejects a K4 boat, exactly 4 quota places are freed; if a NOC rejects a K2 boat, exactly 2 quota places are freed).
138. The Panel understands that the above interpretation, consistent with the interpretation held by the ICF and that led to the contested decision, is the most reasonable understanding of the OQS and which more adequately considers its systematic, literal wording and drafting history.
139. In any case, the Panel considers it important to address other issues raised by the Appellants:
- (a) The table in page 2 of the OQS would be changed should the Panel follow the ICF's interpretation.
- It is true that the ICF's interpretation of the OQS would mean that the final quota places attributed to each event are different from the ones established in the table in page 2 of the OQS. However, the Panel shares the ICF's argument that this table is a starting point of quota places available to be won at each event, as agreed with the IOC. This is not immutable and would be subject to adjustments once the reallocation of places pursuant to Section D is carried out. This interpretation is, again, the one that is most in line with a systematic and teleological interpretation of the OQS.
- The Appellants hold that the ICF's interpretation fundamentally alters this table and the number of competing athletes, as there is no requirement for NOCs to participate in events through which they won quota places, even if reallocated. However, the Panel notes that 'doubling-up' is an essential feature in the rule, a feature which can be reasonably expected to be used by participating NOCs. Furthermore, although athlete quota places are reallocated, boat quota places are not and such boat quota places are offered to NOCs for acceptance. Although an NOC is not required to accept these boat quota places, once accepted it should be expected to put such boat on the water.
- (b) The ICF's interpretation and "upwards" adjudication of places freed up in K2 to K4 is contrary to sporting logic.

Admittedly, upwards adjudication of quota places is not necessarily common. In general one intuitively considers that when spaces are freed up in a specific competition, those places are used by athletes in that same competition. However, this intuitive approach is not enough to overturn an interpretation that more clearly abides with the purpose and meaning of the OQS. Furthermore, this intuitive approach is distorted by the fact that in the kayaking competitions athletes will be able to ‘double-up’, which means that athlete quota places adjudicated to K4 are not necessarily lost to K2. The way in which competition timetables and calendars are arranged and the ICF’s declared (and undisputed) intention to allow doubling up to increase participants in each event further informs this decision.

Finally, even if the Panel considered it to be counterintuitive, this is a choice to be made by the ICF in what it understands is the best interest of the sport, a decision that unless taken against specific duties or norms is not under the power of review of this Panel. The Panel has full power to review the ICF’s correct application of its rules but it cannot mandate a specific interpretation on the sole basis of what it considers to be more adequate to sporting logic.

- (c) The application of the *contra proferentem* and fairness principles.

The Panel holds that neither the *contra proferentem* nor the fairness principles are applicable to this case.

In the first case, because although the drafting of the rules is clearly insufficient, this is not a case where the *contra proferentem* interpretation benefits one party against the drafter of the obscure rule. Quite the opposite, in this case the unclear rule both benefits and damages national federations and their athletes and only does so after the event (i.e. the ICF’s interpretation would benefit the Appellants had their finishing positions been different). The *contra proferentem* rule of interpretation may be of importance in contractual interpretation where one of the party drafts the obscure clause. It may also be of relevance in the interpretation of statutory rules predisposed by an entity, on disciplinary measures where unclear wording cannot be the basis of a conviction. However, it cannot be upheld in a case where the enacting body merely acts as a deciding authority on issues that only affect its associates, none of which effectively intervened in the drafting of the obscure rule. Furthermore, there is no evidence in the record to show that any party questioned the clarity of the OQS before the World Championships.

In the second case, the fairness principle is also not subject to application. The fairness principle would allow the Panel to disregard the strict application of a norm where it would clearly and disproportionately be contrary to a strict understanding of fairness in sport. This is not the case. The Panel cannot order that Italian and English athletes be given quota places without taking them from other qualified athletes, as the total number of athlete quota places has been fixed by the IOC. Although recognizing the sacrifices and preparation that qualification for the Olympic Games entails, the Panel

cannot disqualify athletes that have earned their place under an interpretation of the OQS that the Panel has found to be correct.

- (d) Whether athletes from Russian or other teams believed to be qualified or not should be of no importance to this arbitration. First, because the available evidence is insufficient to prove that (i) they were sufficiently informed of the nuances of reallocation; (ii) that their views were those of their NOCs and other NOCs; and (iii) that such notion was generally shared between athletes. Second, because the most relevant proof of purpose in this case is the intent of the ICF when drafting the OQS, which has been proven to the Panel's satisfaction.

- 140. Based on the above conclusion, the decision rendered by the ICF on 6 September 2015 shall be confirmed and all other requests of the Parties must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

- 1. The appeal filed on 28 September 2015 by the Italian Canoe Federation and the Italian National Olympic Committee, joined by the British Olympic Committee and British Canoeing on 15 December 2015, against the decision rendered by the International Canoe Federation on 6 September 2015 is dismissed.
- 2. The decision rendered by the International Canoe Federation on 6 September 2015 is confirmed.
- (...)
- 5. All other motions or prayers for relief are dismissed.