

CAS 2024/A/10740 Emil Bengtson et al. v. Swedish Olympic Committee

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-law in Hamburg, Germany

Arbitrators: Mr. James H. Carter, Attorney-at-Law, New York, USA
Mr. Klaus Reichert SC, Barrister in London, United Kingdom

in the arbitration between

Emil Bengtson, Sweden
Sara Lennman, Sweden
Rebecka Hallerth, Sweden
Simon Sundström, Sweden
Yolanda Ngarambe, Sweden
Leo Magnusson, Sweden

Assisted by Mr. Karl Ole Möller, Attorney-at-law with Advokatfirman Nordia KN in Stockholm, Sweden

- Appellants -

and

Swedish Olympic Committee, Sweden

Represented by Mr. James Hope, Mr. Nils Ivars, Mr. Sebastian Saadieh, Attorneys-at-law with Advokatfirman Vinge KB in Stockholm, Sweden

- Respondent -

I. THE PARTIES

1. The Appellants consist of the following Swedish athletes (also referred to hereinafter as the “Athletes” or the “Appellants”):
 - i. Mr. Emil Bengtson, who competes in sailing (class ILCA7);
 - ii. Ms. Sara Lennman, who competes in athletics (shot put);
 - iii. Ms. Rebecka Hallerth, who competes in athletics (hammer throw);
 - iv. Mr. Simon Sundström, who competes in athletics (3000 metres steeplechase);
 - v. Ms. Yolanda Ngarambe, who competes in athletics (1500 metres); and
 - vi. Mr. Leo Magnusson, who competes in athletics (3000 metres steeplechase).
2. The Swedish Olympic Committee (the “Respondent” or “SOC”) is the National Olympic Committee (“NOC”) for Sweden.
3. The Appellants and Respondent are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. The present dispute is primarily based on what the Appellants allege is a decision of the SOC. The decision follows – according to the Appellants – *inter alia* from a press release (the “Press Release”) published by the SOC on 5 July 2024, which reads in its pertinent parts as follows:

“International Olympic Committee (IOC) confirms that the Swedish Committee (SOC) and other national Olympic committees have full authority to select which athletes will participate in the Olympics.

On July 8, the Swedish Olympic team will be finalized, currently consisting of 117 active athletes from 19 different sports. In connection with the latest selections, questions have arisen regarding national selection rules and SOC’s mandate in relation to the Olympic Charter. ...

The IOC confirms that the responsibility for Olympic selections lies clearly with SOC and that SOC is ultimately responsible for the selection of teams and athletes in accordance with the Olympic Charter. The IOC also states that national Olympic committees and national federations can establish selection criteria that are stricter compared to the minimum international qualification levels, says SOC’s team leader Peter Reinebo. ...

According to the IOC’s statutes 27.3 (page 61), national Olympic committees have the exclusive right to choose which athletes are sent to the Olympics. It is common worldwide for national Olympic committees to exercise this right. ...

The Swedish Olympic Committee is a member-driven and democratic organization consisting of the 38 Olympic special federations (OSF). Selection criteria for participation in the Olympics are determined jointly by the federations. At SOC’s annual meeting in April 2023, the federations decided to change the criteria for participating in the Olympics,

changing the basic criterion from top-8 to top-12 for both teams and individuals. What corresponds to a top-12 result in the highest international competition in the relevant sport is determined and documented in collaboration with the respective sport/coach. The future criterion exists for young promising athletes who are close but have not yet reached the basic criterion”.

5. The Appellants were not among the “117 active athletes from 19 different sports” referred to in the above Press Release.
6. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, the CAS file and the content of the hearing that took place on 25 July 2024. References to additional facts and allegations found in the Parties’ written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it shall refer in this Award only to those submissions and evidence it deems necessary to explain its reasoning.

A. The Olympic Charter and Qualification Systems for the Games

7. The Olympic Charter¹, which governs the conduct and processes of the International Olympic Committee (the “IOC”) and the Olympic Movement, includes the following relevant parts:

“27 Mission and role of the NOCs

[...]

3 The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and at the regional, continental or world multisports competitions patronised by the IOC. In addition, each NOC is obliged to participate in the Games of the Olympiad by sending athletes.

[...]

7 NOCs have the right to:

7.2 send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter;

*40 Participation in the Olympic Games**

[...]

Bye-law to Rule 40

1 Each IF establishes its sport’s rules for participation in the Olympic Games, including qualification criteria, in accordance with the Olympic Charter. Such criteria must be submitted to the IOC Executive Board for approval.

¹ While there have been multiple editions of the Olympic Charter in force since the past Summer Olympic Games, there are no substantial amendments to the relevant parts quoted.

[...]

44 Invitations and entries*

2 Only NOCs recognised by the IOC may submit entries for competitors in the Olympic Games.

3 Any entry is subject to acceptance by the IOC, which may at its discretion, at any time, refuse any entry, without indication of grounds. Nobody is entitled as of right to participate in the Olympic Games.

4 An NOC shall only enter competitors upon the recommendations for entries given by national federations. If the NOC approves thereof, it shall transmit such entries to the OCOG. The OCOG must acknowledge their receipt. NOCs must investigate the validity of the entries proposed by the national federations and ensure that no one has been excluded for racial, religious or political reasons or by reason of other forms of discrimination

5 The NOCs shall send to the Olympic Games only those competitors adequately prepared for high level international competition. Through its IF, a national federation may ask that the IOC Executive Board review a decision by an NOC in a matter of entries. The IOC Executive Board's decision shall be final".

8. On 7 December 2022, World Sailing, the world governing body for the sport of sailing, adopted the Sailing Qualification System (the "World Sailing QS") for the Summer Olympic Games Paris 2024 ("Games"). The World Sailing QS provides – *inter alia* – for quota places for the participation in the Games. These quota places are allocated, based on the individual performance records prior to the Games of the top-ranked athletes globally, to the respective NOCs of the athletes' nationality, but not to an individual athlete. This follows from Sec. E1 of the World Sailing QS, which reads as follows:

E. CONFIRMATION PROCESS FOR QUOTA PLACES

E.1 CONFIRMATION OF QUOTA PLACES

E.1.1 World Sailing will publish the results of the event within seven (7) working days after the last day of the qualification event on its website (paris2024.sailing.org).

E.1.2 World Sailing will confirm in writing to the NOCs within ten (10) working days after the last day of each qualification event, the quota places they have obtained.

E.1.3 The NOCs will then have until midnight London time on the date in the table below to confirm to World Sailing using the World Sailing confirmation form via the specified email if they wish to use these quota places, as detailed in section G. **Qualification Timeline**.

9. It follows from E1.3 that the NOCs may decline a quota place allocated to them. In such case the quota place is reallocated by World Sailing. The relevant provision in the World Sailing QS reads as follows:

E.1.5 Quota places not confirmed by the deadline will be deemed declined and reallocated according to section F. **Reallocation of Unused Quota Places**.

10. Sometime in December 2022, World Athletics, the world governing body for the sport of athletics, adopted the Athletics Qualification System for the Games (the “World Athletics QS”). Similarly to the World Sailing QS, the World Athletics QS also provides for quota places. These can be earned as follows:

General

An athlete can qualify in one of two ways:

- By achieving the entry standard (see section I.) within the respective qualification period outlined below. The entry standards, approved by the World Athletics Council in November 2022, have been determined in order to target the qualification of approximately 50% of the athletes. For the avoidance of doubt, any athlete achieving the entry standard will be deemed qualified, regardless of them being within the 50% or not.
- The remaining qualification places will be allocated on the basis of the World Athletics World Rankings within the ranking period.

11. The purpose of the Entry Standard (first pathway) (that need to be achieved within a certain time frame) is to require an athlete to meet a qualifying standard, meaning a mark as good or better than this set mark, in order to be eligible to compete. The standard for the individual disciplines is set in the World Athletics QS as follows:

Men	Event	Women
10.00	100m	11.07
20.16	200m	22.57
45.00	400m	50.95
1:44.70	800m	1:59.30
3:33.50 (3:50.40)	1500m (Mile)	4:02.50 (4:20.90)
13:05.00	5000m	14:52.00
27:00.00	10,000m	30:40.00
13.27	110m Hurdles / 100m Hurdles	12.77
48.70	400m Hurdles	54.85
8:15.00	3000m Steeplechase	9:23.00
2.33	High Jump	1.97
5.82	Pole Vault	4.73
8.27	Long Jump	6.86
17.22	Triple Jump	14.55
21.50	Shot Put	18.80
67.20	Discus Throw	64.50
78.20	Hammer Throw	74.00
85.50	Javelin Throw	64.00
8,460	Decathlon / Heptathlon	6,480
1:20:10	20km Race Walk	1:29:20
2:08:10	Marathon	2:26:50

12. Again, the quota places earned based on the Entry Standard (first or second pathway) are allocated not to an individual athlete, but to the NOC of the state of the athlete’s nationality. Similarly to the World Sailing QS, also within the scope of the World Athletics QS, the NOC can accept or decline the quota place allocated to it:

F.1. REALLOCATION OF UNUSED QUOTA PLACES

After publication of the qualified athletes on 2 July 2024, NOCs must inform World Athletics of their intention to decline a quota place, whether in individual or relay events, by the deadline of 4 July (midnight Monaco time). Notifications must be sent to teamservices@worldathletics.org by the NOC/Member Federation concerned, with a copy to its respective NOC. Quota places declined after the above deadline will not be reallocated.

During the period 4 – 6 July, World Athletics will reallocate the declined quota places to the next best ranked athlete in the same event according to the World Athletics World Rankings, respecting the maximum quota by NOC per event. In case of tie (same world ranking position and ranking score), this will be resolved in favour of the athlete with the next best performance score.

B. The SOC Supplementary Selection Rules

13. Sometime in April 2023, the SOC general assembly adopted the Supplementary Selection Rules (the “SOC Rules”) for the Games.
14. On 11 October 2023, the SOC released the SOC Rules for the Games, with the aim of choosing a team that could win medals for Sweden. The relevant parts of the SOC Rules are as follows:

“2. Criteria for the selection of athletes - individual Olympic competitor

2.1) Basic Criterion: The selected athlete must have achieved results and shown such form that he/she is deemed capable of competing for at least twelfth place at the Olympic Games. The basic criterion must be achieved at the highest level of international competition on an Olympic scale, i.e. taking into account the number of athletes per nation allowed by the rules for Olympic participation.

2.2) Future criterion: The SOC may select Olympic participants who do not meet the basic criterion, but who are jointly judged by the sports directors of the OSF and the SOC to be a promising participant for the next Olympics. The Olympic participation must be considered a good learning experience for the athlete and a good investment for the next Olympics with a view to medal level. However, the athlete must have the assessed ability to perform at a high level already at the current Olympics.

2.3) Exception criteria:

In specific cases, exceptions to the basic criterion may be made. A prerequisite for any exception is that the active person has met the international qualification or quota criteria. An application for exemption may be made by the sports officials of the relevant OSF together with the sports officials of the SOC, provided they consider it well justified for one of the following reasons

- If the current results for the basic criterion are missing but the assessment is that the current level of the active person can still be considered as corresponding to the basic criterion.*
- If a sport does not have a participant in the Olympic squad and it is considered that the participation of an athlete would particularly benefit that sport. The definition of sports is made in the selection document for each Olympic Games.*

Decisions on any exceptions are taken by the SOC Board or a group appointed by the Board.

[...]

Athletics

[...]

Application of selection criteria and quality requirements

The selection of athletes for the Paris Olympics, on both the basic and future criteria, is based on an overall assessment of results and performances in international competitions with high international competition.

The basic criterion for nomination is considered met if the athlete has placed in the top 12 at the 2023 World Championships or shows an equivalent result and level of performance at other competitions in the highest international competition. The championships that form the basis for the nomination limit are the 2016 Olympics, 2020 Olympics, 2022 World Championships and 2023 World Championships. The basis for the nomination limit is the average result of the season's best before the championship for those who have reached 10-14 places at each championship. An athlete may be considered for selection even if they do not meet the nomination limit if they can show several results within the level range. In marathon and all-around, the nomination limit is counted on results made even up to 1 year before the championship

These nomination limits and level ranges should be seen as guidelines for the national team captain to be able to nominate the active, but is not automatically a clear Olympic selection.

The SOC makes the final decision on selection.

Results achieved at low level competitions or at indoor competitions may be supportive but are not the sole basis for nomination or selection.

Active can be nominated on the future criterion without having reached the SOK nomination limit or having results in the level range.

If more than the maximum of three (3) athletes pass the nomination level in a sport, the President decides who to nominate.

Nomination of individual active:

CRITERIA for the national team captain to nominate an athlete for Olympic selection. To be eligible for selection, 1 or 2 below always apply:

1. Meeting WA's eligibility threshold.

2. To be invited by WA as the best ranked athlete in addition to those who have passed WA's qualification limit up to the number of participants in the event. In addition, the athlete must have shown top-12 results and be deemed capable of repeating this at the 2024 Paris Olympics (Basic Criterion). The nomination limit and, secondarily, the range of levels for this are set out below. Nomination limits are set on the basis of four championships, Olympic Games 16, Olympic Games 21, World Championships 22 and World Championships 23. The nomination limit is based on the average result of the season's best before the championship for those who have achieved 10-14 places at each championship. An active athlete may be considered for selection even if he/she does not meet the nomination limit if he/she can show several results within the level range. Results in the range close to the qualification limit increase the possibility of selection. In case of large differences in results between the championships, the latter two will count more heavily.

3. *Separate dialog should be held with athletes/coaches in sports where multiple results in the level range are not possible due to the number of competitions, such as marathons and all-around.*

4. *Placed in the top 12 at the 2023 World Cup in Budapest (basic criterion).*

5. *Top 12 after the end of the international qualification period (Road to Paris), (Basic criterion).*

6. *If criteria 1 or 2 are met, nomination can also be made on the Future criterion.*

7. *Exceptions to the nomination limits and level ranges may be made on a case by case basis in special circumstances. E.g. weather and wind at the time of the competition, few competitions due to injury/illness, previous championship merits. In these special cases, a dialog is held between the national team captain and SOC's sports director, and in a second step with the athlete/coach, before any nomination is made.*

[...]"

15. Under the SOC Rules, there are three criteria to be considered for selection by the SOC:

- The basic criterion (“Basic Criterion): Athlete must be deemed to be capable to compete for, at least, 12th place at the Games. To this end, the SOC Rules define certain sporting limits (“Nomination Limits”) for each sport.
- The future criterion (“Future Criterion”): Athlete, who has not fulfilled the Basic Criterion, is jointly deemed by the SOC and the national federation to be a future talent and Olympic medal candidate, whose development may benefit from participating in the Games.
- The exemption criterion (“Exemption Criterion”): Athlete may be exempted from the Basic Criterion if, *inter alia*, the Athlete has fulfilled the international qualification criteria but not the SOC Basic Criterion.

16. Notably, there is a safeguard under the SOC Rules with respect to the Basic Criterion, wherein there is a set range slightly below the Nomination Limit (the “Potential Range”), for which, if an athlete has several results within this range, he or she may also be nominated to the SOC.

C. Circumstances Around the Appellants’ Qualification

17. The Appellants are Swedish athletes who meet the requirements for the Games, pursuant to the qualification systems of their respective sports:

- Mr. Eric Bengtson competes in the sailing class ILCA7. It is undisputed that his performance earned a quota place for the SOC under the World Sailing QS. He achieved rankings from 17th to 26th in the relevant events during the qualification period of July 2023 to 24 April 2024. The SOC was informed by World Sailing of the quota place based on Mr. Eric Bengtson’s results and, on 13 March 2024, the SOC accepted the quota place earned by Mr. Bengtson for the Games on a

preliminary basis. However, the SOC did not confirm the quota place within the prescribed deadline because it considered that Mr. Eric Bengtson did not meet the SOC Rules, described above, for its selection of Sweden's team for the Games. World Sailing then reallocated the quota place to another NOC.

- Ms. Sara Lennman, born on 8 April 1996, competes in the shot-put event in athletics. The Entry Standard according to the World Athletics QS is 18.80m. Ms. Lennman is placed 34th based on World Athletics' World Rankings. The SOC Rules have set the qualification period from 1 June 2023 and 30 June 2024 and the Nomination Limit for shot put at 18.88m. The Range of Potential Exemption is set by the SOC Rules at 18.33m, to 18,87m. Ms. Lennman did not achieve the Entry Standard and did not meet the Nomination Limit during the qualification period. However, she recorded one performance within the Potential Range (18.39m) on 19 May 2024. Ms. Lennman was not nominated by the SOC for the Games and consequently her quota place was reallocated to another NOC.
- Ms. Rebecca Hallerth, born on 4 January 1996, competes in the hammer throw event in athletics which has an Entry Standard according to the World Athletics QS of 74.00m. Ms. Rebecca Hallerth is ranked 33rd based on World Athletics' World Rankings. The SOC Rules have set the Nomination Limit at 73.45m. Ms. Hallerth did not achieve either the Entry Standard nor the Nomination Limit within the qualification period between 1 June 2023 and 30 June 2024. However, she recorded one performance within the Potential Range set at 71.02m to 73.44m for hammer throw (72.62m) on 25 May 2024.
- Mr. Simon Sundström, born on 4 February 1998, competes in the 3000m steeplechase event in athletics. The Entry Standard according to the World Athletics QS is 8:15.00. Mr. Sundström is ranked 24th based on World Athletics' World Rankings. The SOC Rules have set the Nomination Limit at 8:15.51. Mr. Sundström did not achieve either the Entry Standard or the Nomination Limit during the qualification period between 1 June 2023 and 30 June 2024. However, he recorded two performances within the Potential Range set at 8:15.52 to 8:19.12 for 3000m steeplechase, *i.e.* 8:17.15 on 2 June 2024 and 8:18.09 on 10 September 2023.
- Ms. Yolanda Ngarambe, born on 14 September 1991, competes in the 1500m event in athletics. The Entry Standard according to the World Athletics QS is 4:02.50. Ms. Ngarambe is ranked 40th based on World Athletics' World Rankings. The SOC Rules have set the Nomination Limit at 04:02.52. Ms. Ngarambe did not achieve either the Entry Standard nor the Nomination Limit during the qualification period between 1 June 2023 and 30 June 2024. In addition, she has not recorded any performances within the Potential Range set at 4:02.53 to 4:04.33 for 1500m.
- Mr. Leo Magnusson, born on 4 February 1998, competes in the 3000m steeplechase event in athletics. The Entry Standard according to the World Athletics QS is 8:15.00. Mr. Magnusson is ranked 38th based on World

Athletics' World Rankings. The SOC Rules have set the Nomination Limit at 8:15.51. Mr. Magnusson did not achieve either the Entry Standard or the Nomination Limit during the qualification period between 1 June 2023 and 30 June 2024. However, he recorded one performance within the Potential Range set at 8:15.52 to 8:19.12 for 3000m steeplechase (8:18.23) on 15 June 2024.

18. On 13 May 2024, the Swedish Sailing Federation ("SSF") informed Mr. Bengtson that he was not nominated to the SOC for selection for the Games.
19. Mr. Bengtson made enquiries at the SSF and received no substantial answers, and he proceeded to appeal the SSF's decision to the SOC on 4 June 2024.
20. On 12 June 2024, Mr. Bengtson had a meeting with some officials from SSF and SOC, wherein Mr. Bengtson made queries about the compliance of the SOC Rules with the Olympic Charter. The officials present thereafter contacted the IOC.
21. On 3 July 2024, Ms. Sara Lennman, Ms. Rebecca Hallerth, Mr. Simon Sundström, Ms. Yolanda Ngarambe and Mr. Leo Magnusson (the "Track and Field Athletes") were informed by the Swedish National Athletics Federation ("SNAF") that they had not been selected to the Swedish Olympic team (the "3 July Decision").
22. On 4 July 2024, the IOC sent an email to the SOC to confirm the exclusive authority of the SOC, with relevant parts of the email as follows:

"Please find attached the various emails the IOC has received from individuals over the last several days, which seem to be connected to the SOK's non-selection of sailing athlete, Emil Bengtson. We also received a press inquiry last week.

We have responded to some of these emails by deferring the individuals to the SOK as per Rule 27 of the Olympic Charter: 'The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and at the regional, continental, or world multi-sports competitions patronized by the IOC'."

23. On 5 July 2024, the SOC issued the Press Release.
24. During the period between 4 and 6 July 2024, World Athletics reallocated the declined quota places of the Track and Field Athletes.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 12 July 2024, the Appellants filed the Statement of Appeal against the Respondent with the CAS in accordance with Articles R48 of the CAS Code of Sports-related Arbitration (2023 edition) (the "CAS Code") respectively. In the Statement of Appeal, the Appellants, *inter alia*, nominated Mr. James H. Carter as an arbitrator and requested an expedited procedure.
26. On 15 July 2024, the CAS Court Office communicated the Statement of Appeal to the Respondent and invited it to state, by 17 July 2024, whether it agreed with the Appellants' request for an expedited procedure. The letter also invited the Respondent

to nominate an arbitrator within ten days of receipt of this letter.

27. On 17 July 2024, the Respondent submitted “initial comments” to the CAS Court Office. Therein, the Respondent requested the CAS to reject the Appellants’ appeal and reserved its right to amend, develop and/or supplement its position and its requests for relief in its subsequent Answer. In addition, the Respondent requested a panel of three arbitrators to decide the case. Finally, the Respondent in its letter stated that it was “*prepared to agree that the matter is determined without a hearing*” and also accepted the Appellants’ request for an expedited procedure and proposed the following procedural calendar subject to the Appellants’ consent:
 - Appellants’ Appeal Brief by 18 July 2024;
 - Respondent’s Answer by 23 July 2024;
 - Summary decision on the merits as soon as possible, and in any event before 26 July 2024.
28. On the same day, the CAS Court Office acknowledged receipt of the Respondent’s letter and invited the Appellants to comment on the Respondent’s proposed procedural calendar by 17:45 CEST of the same day. The letter invited the Respondent to confirm whether it intended to pay its share of the advance of costs. Finally, the letter invited the Appellants to confirm by 18 July 2024 whether they requested a hearing to be held in this matter.
29. Still on the same day, the Respondent nominated Mr. Klaus Reichert SC as an arbitrator. Furthermore, the Respondent confirmed that it intended to pay its share of the advance on costs.
30. Later on the same day, the Appellants informed the CAS Court Office that they requested an expedited procedure, accepted a panel of three arbitrators, wished to amend the procedural calendar proposed by the Respondent, agreed to decide the matter on written submission only and stated that they would like “*to receive the fixed cost as soon as possible*”.
31. Still on 17 July 2024, the CAS Court Office informed the Parties that the Appellants’ deadline to file the Appeal Brief was 18 July 2024 and invited the Respondent to confirm whether it agreed with the Appellants’ proposal for the filing of the Answer by 19 July 2024.
32. In a final letter of same day, the Respondent objected to the Appellants’ amended procedural calendar and requested more time to file its Answer.
33. On 18 July 2024, the CAS Court Office informed the Parties that the matter of the procedural calendar would be submitted to the President of the CAS Appeals Arbitration Division, or her Deputy.
34. Still on 18 July 2024, the CAS Court Office communicated the decision of the Deputy President of the CAS Appeals Division. According thereto, the following procedural calendar was implemented:

- 18 July 2024 Appellants' Appeal Brief
- 22 July 2024 Respondent's Answer
- 23 July 2024 Appellants' Reply (if any)
- 24 July 2024 Respondent's Rejoinder (if any)
- 25 July 2024 Potential Hearing (subject to the Panel's decision in this regard)
- 26 July 2024 Notification of the operative part of the CAS award.

35. On 18 July 2024, the Appellants filed the Appeal Brief, in accordance with Article R51 of the CAS Code and the expedited procedural calendar.
36. On 19 July 2024, the CAS Court Office acknowledged receipt of the Appellants' Appeal Brief and invited the Respondent to submit its Answer by 22 July 2024.
37. On the same day, the Respondent submitted to the CAS Court Office an additional power of attorney by email.
38. On 22 July 2024, the Respondent filed its Answer, in accordance with Article R55 of the CAS Code.
39. On the same day, the CAS Court Office acknowledged receipt of the Respondent's email dated 19 July 2024 and informed the Parties that pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel to decide the present dispute was constituted as follows:
- President: Prof. Dr Ulrich Haas, Professor of Law in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany
- Arbitrators: Mr. James H. Carter, Attorney-at-Law, New York, USA
Mr. Klaus Reichert SC, Barrister in London, United Kingdom
40. On 23 July 2024, the CAS Court Office acknowledged receipt of the Respondent's Answer and invited the Parties to confirm their availability for a hearing via videoconference.
41. On 24 July 2024, the CAS Court Office noted that in view of the Parties' availability and on behalf of the Panel, the Parties were invited to appear at the hearing to be held via videoconference on 25 July 2024, 12:30 (Swiss time).
42. On the same day, the Appellants sent an email informing the CAS Court Office that they would be assisted by Mr. Karl Ole Möller, Attorney-at-law.
43. Still on the same day, the CAS Court Office acknowledged receipt of the Appellant's email and enclosed an Order of Procedure ("OoP") for the Parties' signatures.

44. On 25 July 2024, the CAS Court Office acknowledged receipt of the Parties' signed OoP and provided a tentative hearing schedule.
45. On the same day, a hearing took place by videoconference before the Panel. Besides Ms. Amelia Moore (Counsel to the CAS), the following persons attended the hearing:

For the Appellants:

Mr. Emil Bengtson (Appellant);
Ms. Sara Lennman (Appellant);
Ms. Rebecka Hallerth (Appellant);
Mr. Simon Sundström (Appellant);
Ms. Yolanda Ngarambe (Appellant);
Mr. Leo Magnusson (Appellant);
Prof. Daniel Stattin (Expert Witness for the Appellants); and
Mr. Karl Ole Möller (Counsel for the Appellants);

For the SOC:

Ms. Åsa Edlund Jönsson (Representative for the SOC);
Mr. Peter Reinebo (Representative for the SOC);
Mr. Fredrik Joulamo (Representative for the SOC);
Mr. James Hope (Counsel for the SOC);
Mr. Nils Ivars (Counsel for the SOC); and
Mr. Sebastian Saadieh (Counsel for the SOC).

46. At the beginning of the hearing, the Parties confirmed that they had no objection as to the formation of the Panel. At the end of the hearing, the Parties acknowledged that their right to be heard had been respected in these proceedings.
47. On 26 July 2024, the CAS Court Office communicated the operative part of the Arbitral Award issued by the Panel.

IV. SUBMISSIONS OF THE PARTIES

48. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellants' Position

49. In their Appeal Brief, the Appellants requested two main aspects of relief as follows:

“The Appellant’s request that the Court of Arbitration of Sports (CAS) orders that the Appellant’s are registered for participation in the Paris 2024 Olympic Games for Sweden; by the Swedish Olympic Committee requesting that the International Olympic Committee, either by withdrawing the spot allocated according to Rule 44 “Invitations and entries” 1-5

or by increasing the number of participants according to Bye-Law to Rule 44 of the Olympic Charter 2023.”

And

“(a) The selection criteria for participation in the Olympic Games decided by the IOC shall apply.

(b) The SOC or Swedish sports federations may not adopt their own selection criteria for the selection of participants in the Olympic Games or amend/modify/change the selection criteria of the IOC.

(c) If the SOC or Swedish sports federations are not allowed to decide on their own selection criteria, such a criterion constitutes a breach or non-compliance with the Charter according to Rule 1.4 of the Charter” (sic).

50. The Appellants submit that the SOC should not have denied the Appellants the opportunity to compete at the Games because the IOC had the exclusive right to decide on the organization of the Games and the sole right to determine the rules for the selection of participants in the Games:

- Rule 40 of the Olympic Charter stipulates the main rules on eligibility, and sets the rules which need to be complied with in order to participate at the Games, as set out in bye-law 40.1 of the Olympic Charter:

“Each IF establishes its sport's rules for participation in the Olympic Games, including qualification criteria, in accordance with the Olympic Charter. Such criteria must be submitted to the IOC Executive Board for approval”.

- As such, only the international sports federations (“IFs”), together with the IOC, if it approves, can determine the criteria to be used in selecting participants for the Games. The SOC is not permitted to alter the IOC’s rules and criteria.
- Further, Bye-law 40.2 of the Olympic Charter also stipulates that the national sports federations (“NFs”) and NOCs are responsible for applying the criteria decided by the IFs and the IOC, which does not give the SOC the right to issue supplementary rules:

“The application of the qualification criteria lies with the IFs, their affiliated national federations and the NOCs in the fields of their respective responsibilities”.

- The division of the competences in the Olympic Charter therefore are as follows: it is for the IFs to propose the qualification system for the Games, the IOC Executive Board to decide whether to apply the standards of that system, and for national bodies to apply only those qualification standards. There are no grounds for transferring competences between the IFs, the IOC, and national bodies, or national bodies have no “residual competence”.
- Rules 27.2 and 27.7 of the Olympic Charter stipulate that NOCs have certain tasks and rights but no unregulated residual competence such as issuing

supplementary selection criteria. As such, the criteria issued by the SOC are a violation of Rule 1.4 of the Olympic Charter.

- While the SOC has exclusive authority to enter participants and select the athletes that will represent Sweden at the Games, the additional criteria set by SOC contradict the Olympic Charter. It is important to distinguish between the competence to make the selection based on the given criteria from the IOC / IFs and competence to decide on the criteria themselves. The SOC has done the latter despite having only competence to do the former according to Rule 27.3 of the Olympic Charter.
- Just because the IOC did not address the incorrect practice of the SOC, this does not justify continued wrongdoing by the SOC.

51. The Appellants further submit that the NOC should be seen as the extended arm of the IOC in the nations in which they operate, pursuant to Rule 27 of the Olympic Charter, and the SOC must therefore apply the qualification criteria approved by the IOC. The term “application” does not imply a right to issue supplementary rules, and any non-compliance by the NOC can incur risk that the NOC will be liable to pay damages under Swedish law to athletes who have been wrongly refused participation at the Olympic Games.

B. The SOC’s Position

52. In its Answer, the SOC requested the Panel to rule as follows:

“(1) The Respondent asks the Panel to issue an initial summary decision denying the relief requested by the Appellants, including a summary of the basis for its decision.

(2) The Respondent asks the Panel to issue a subsequent reasoned decision addressing the substantive and procedural defences raised.

(3) In accordance with Article R64.5, first sentence, of the CAS Code, the Respondent asks the Panel to determine that the Appellants shall bear the full amount of the arbitration costs. However, for the purposes of these specific proceedings only, and subject to the general reservation of rights set out below, the Respondent does not ask for a contribution towards its legal fees and other expenses as contemplated by Article R64.5, second sentence, of the CAS Code”.

53. The SOC claims that there are a series of procedural / jurisdictional problems with the Appellants’ claim. The SOC also stated in its Answer that “[i]n fairness to the Appellants, the SOC asks the Arbitral Panel to consider the substance of the Appellants’ claims. In addition, the SOC also asks the Arbitral Panel to note that there are several procedural problems with the Appellants’ claims”. The procedural/jurisdictional problems raised by the Respondent are the following:

- Section 31 of the SOC Statutes provides that only “[d]ecisions by the SOC Board, or by a mediation body, arbitral tribunal or disciplinary tribunal appointed by the SOC” may be appealed to the CAS.

- The Press Release issued by the SOC on 5 July 2024 is not a “decision” under Section 31 of the SOC Statutes.
 - In any event, Mr. Emil Bengtson failed to bring his claim in time, as the decision of the SSF not to nominate him to the SOC for selection was communicated to him in May 2024, and the present appeal was only filed in July 2024, which is more than “21 days after the receipt of the decision”, pursuant to Section 31 of the SOC Statutes.
 - The Appellants’ present appeal is – in reality – an appeal against and to overturn or rewrite the SOC Rules which were adopted at the SOC general assembly in April 2023. However, there is no right to appeal to the CAS against a decision of the SOC general assembly, and the appeal would be out of time.
 - The relief sought by the Appellants cannot be legally granted by the CAS. The CAS cannot order that the SOC must request that the IOC withdraw places that have been reallocated to other NOCs, nor can the CAS order that the SOC must request that the IOC increase the number of participants according to the Bye-Laws to Rule 44 of the Olympic Charter.
54. The SOC contends that the appeal must fail on the merits. As the NOC of Sweden, it has exclusive authority to select athletes for the Swedish Olympic team, as follows:
- Under the Olympic Charter, the NFs submit nominations to the NOC for their athletes, and the NOC selects candidates from the athletes nominated by the NFs. The NOC then makes the final selection of athletes who will represent its country at the Olympic Games, but the NOC is not obliged to select every nominated athlete under Rule 44.4 of the Olympic Charter. In any event, the IOC has the right to deny an athlete entry to the Games at its own discretion under Rule 44.3 of the Olympic Charter.
 - Rule 27.3 of the Olympic Charter empowers the NOCs with the “*exclusive authority for the representation of their respective countries at the Olympic Games*”, which allows for discretion, wherein NOCs are bound to make an independent assessment of each nominated candidate, with possible considerations set out in the Bye-laws of Rules 27 and 28, and Rule 44 of the Olympic Charter.
 - Rules 27 and 44 of the Olympic Charter sets out a regime for selection for the Games, wherein the NF nominates athletes to the NOC, and the NOC has exclusive authority to select athletes to represent its country, and the IOC, at its own discretion, can ultimately decide not to allow an athlete to compete.
 - Rule 27.3 of the Olympic Charter, which stipulates that “*each NOC is obliged to participate in the Games of the Olympiad by sending athletes,*” does not mean that the SOC is obliged to name all athletes who have met IF/SOC qualification system standard to the Swedish Olympic team, but rather merely precludes possibilities of boycott or refusal to participate in the said Games. There is no

obligation on the NOCs to select any particular athlete, nor is there any right for any individual athlete to compete at the Olympic Games.

55. The SOC submits that it has the right to apply supplementary selection criteria in addition to the qualification standards set by the IOC, as follows:
- Under the World Sailing QS, quota places are allocated to NOCs and not to individual athletes and it is expressly stipulated that NOCs can choose to “*not confirm*” the allocated quota place or “*decline*” a quota place, as a result of which the unused quota place can be reallocated. Further, the World Sailing QS also specifies that “[e]ach NOC, in coordination with their national sailing federation, determine their own criteria and timeline for selecting which athletes will represent them in the Events the NOC qualifies”. As such, there is no obligation under the World Sailing QS for the SOC to accept a quota place.
 - Under the World Athletics QS, NOCs also can choose to “*decline*” a quota place, following which the unused quota place can be reallocated to the NOC of the next ranked athlete among all the qualified athletes globally in the same event. As such, there is no obligation under the World Athletics QS for the SOC to accept a quota place.
 - The SOC Rules were adopted democratically by the SOC general assembly in April 2023, which includes 38 NFs of Sweden.
 - The IOC has confirmed that the SOC had exclusive authority for the representation of Sweden at the Games, through an email dated 4 July 2024.
 - Several other countries have their own additional selection criteria for the Games, such as the United Kingdom, the Netherlands, and New Zealand.
56. The SOC submits that CAS jurisprudence has confirmed that the NOCs have an exclusive right to select competitors for the Olympic Games, and that quota places are allocated to the NOCs and not to individual athletes (CAS OG 20/05 para. 7.7; OG 22/007 para. 98).
57. The SOC maintains that the Appellants did not fulfil the selection criteria in the SOC Rules.
- i) Mr. Emil Bengtson (sailing class ILCA7)
 - Mr. Bengtson did not obtain any top-12 results in competitions during the qualification period between July 2023 and 24 April 2024. During the qualification period, Mr. Bengtson only achieved results from 17th to 26th placing.
 - The Swedish national sailing coach and the SOC sports director have each and together assessed that Mr. Bengtson does not meet the SOC Rules for selection for any of the Criteria set out in the SOC Rules.
 - Given that the SSF did not nominate Mr. Bengtson to the SOC for selection, it

was outside the authority of the SOC to select Mr. Bengtson for the Games. As such, the SOC declined the offered quota place to Sweden.

ii) Ms. Sara Lennman (shot-put)

- Ms. Lennman did not achieve the Entry Standard of 18.80m or the SOC Nomination Limit of 18.88m during the qualification period between 1 June 2023 and 30 June 2024, but only recorded one performance within the Potential Range set at 18.33m to 18.87m for shot put, at 18.39m on 19 May 2024. As such, the SOC declined the offered quota place.

iii) Ms. Rebecca Hallerth (hammer throw)

- Ms. Hallerth did not achieve the Entry Standard of 74.00m or the SOC Nomination Limit of 73.45m during the qualification period between 1 June 2023 and 30 June 2024, but only recorded one performance within the Potential Range set at 71.02m to 73.44m for hammer throw, at 72.62m on 25 May 2024. As such, the SOC declined the offered quota place.

iv) Mr. Simon Sundström (3000m steeplechase)

- Mr. Sundström did not achieve the Entry Standard of 8:15.00 or the SOC Nomination Limit of 8:15.51 during the qualification period between 1 June 2023 and 30 June 2024, but recorded two performances within the Potential Range set at 8:15.52 to 8:19.12 for 3000m steeplechase, at 8:17.15 on 2 June 2024 and 8:18.09 on 10 September 2023. As such, the SOC declined the offered quota place.

v) Ms. Yolanda Ngarambe (1500m)

- Ms. Ngarambe did not achieve the Entry Standard of 4:02.50 or the SOC Nomination Limit of 04:02.52. Ms. Ngarambe did not achieve either standard during the qualification period between 1 June 2023 and 30 June 2024, nor record any performances within the Potential Range set at 4:02.53 to 4:04.33 for 1500m. As such, the SOC declined the offered quota place.

vi) Mr. Leo Magnusson (3000m steeplechase)

- Mr. Magnusson did not achieve the Entry Standard of 8:15.00 or the SOC Nomination Limit of 8:15.51. Mr. Magnusson did not achieve either standard during the qualification period between 1 June 2023 and 30 June 2024, but recorded one performance within the Potential Range set at 8:15.52 to 8:19.12 for 3000m steeplechase, at 8:18.23 on 15 June 2024. As such, the SOC declined the offered quota place.

58. The SOC submits that the requests of the Appellants can no longer be carried out by the Respondent:

- The IOC already re-allocated the declined quota places by the SOC to the NOCs

of the next ranked athletes and cannot withdraw places already re-allocated.

- The Panel is also not able to order the SOC to make a request to the IOC to increase the number of participants for the respective events, as it is already confirmed in previous decisions that the CAS itself cannot grant additional quota places, re-write or amend a qualification system, or add additional places to athletes who have not been selected by an NOC (CAS OG 22-007, para. 103; CAS OG 22/03, paras. 8.15, 8.19, 8.20; CAS OG 20/05, para. 7.13 ff; CAS OG 22/05, para. 7.19)

V. JURISDICTION

A. The Applicable Provisions

59. According to Article R47 of the CAS Code, the Panel has jurisdiction to hear:

“[a]n 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”.

60. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.

61. Sections 30 and 31 of the SOC Statutes set out the procedure for appeals to the CAS as follows:

“§ 30 Dispute resolution and arbitration

Disputes concerning Swedish olympic issues shall be determined by the SOC Board. The SOC Board shall decide to determine the issue, or it shall appoint a mediation body, arbitral tribunal or disciplinary tribunal with the task of determining the issue.

§ 31 Appeals to the CAS

Decisions by the SOC Board, or by a mediation body, arbitral tribunal or disciplinary tribunal appointed by the SOC, in a sport-related dispute, may only be appealed to the Court of Arbitration for Sports (CAS) in Lausanne, which shall finally determine the dispute in accordance with the Code of Sports Related Arbitration.

Appeals shall be filed with CAS within 21 days after receipt of the decision”.

B. The Position of the Parties

62. The SOC objects to the Panel hearing the present dispute on grounds that the Press Release by the SOC on 5 July 2024 is not a decision appealable to the CAS pursuant to Section 31 of the SOC Statutes.

63. The Appellants, at the hearing, clarified that they are relying on the 3 July Decision from the SOC on the non-selection of the Track and Field Athletes. Mr. Bengtson also clarified that the Press Release was the first time he received an answer from the SOC on the compliance of the SOC Rules with the Olympic Charter, and bases his appeal on the Press Release. The Appellants further maintain that, on that basis, Section 30 of the SOC Statutes, which stipulates that all disputes pertaining to the Swedish Olympics are to be “*determined by the SOC Board*”, are appealable to the CAS under Section 31 of the SOC Statutes.

C. The Legal Nature of the 3 July Decision / Press Release: Matter of Jurisdiction or Admissibility

64. It is unclear if the issue of whether the 3 July Decision or the Press Release qualifies as a “decision” within the meaning of Article R47 of the CAS Code is a matter of jurisdiction or admissibility. The CAS jurisprudence is not unanimous. In *CAS 2008/A/1633* and *CAS 2022/A/8865-8868*, the panels treated the question whether the appeal was directed against a “decision” as an admissibility issue. In *CAS 2007/A/1633* or *CAS 2015/A/4174*, on the contrary, the respective panels analysed the identical issue as a jurisdictional matter.
65. The Panel finds that the better arguments speak in favour of qualifying the issue as an admissibility matter (cf. also *CAS 2021/A/8034*, no. 74). The CAS Code provides different types of proceedings depending on the matter in dispute, *i.e.* whether the requests filed by the Appellant relate to the setting aside of a “decision” of a sports organisation. If the latter is the case, then the dispute will be adjudicated according to the provisions applicable to the Appeals Arbitration Procedure. In case the matter in dispute does not concern an appeal against a decision, the respective provisions of the Ordinary Appeals Procedure apply. The question of what procedural rules apply are completely independent from the question of whether the CAS – based on an arbitration agreement – has jurisdiction. As such, the Panel will proceed to address these arguments arising from Article R47 of the CAS Code in the next part on admissibility.

D. The Scope Ratione Materiae of the Arbitration Clause

66. According to Section 31 of the SOC Statutes, the scope of the arbitration clause contained therein is restricted. According thereto, the CAS only has jurisdiction for appeals directed against “[d]ecisions by the SOC Board, or by a mediation body, arbitral tribunal or disciplinary tribunal appointed by the SOC, in a sport-related dispute” which are appealable to the CAS. The Panel understands that the Appellants are basing their respective appeals on the 3 July Decision (for the Track and Field Athletes) and on the Press Release dated 5 July 2024 (in the case of Mr. Bengtson). The question, thus, is whether these acts stem from “*the SOC Board*” pursuant to Section 31 of the SOC Statutes. In its Answer the Respondent submitted that these acts have not been issued by the SOC Board and that, therefore, there is no CAS jurisdiction.
67. The Panel notes that the Respondent’s position is somewhat ambivalent. In its Answer, the Respondent submitted that in “*fairness to the Appellants, the SOC asks the Arbitral Tribunal to consider the substance of the Appellant’s claims*”. However, one cannot

object to the jurisdiction of the CAS and, at the same time, request the Panel to decide “in fairness” on the substance of the Appellants’ claim. The question, therefore, is, whether by submitting this somewhat contradictory position the Respondent has waived its right to object to CAS jurisdiction. The Panel is not prepared to accept this as a waiver. The Respondent has signed the OoP, which states that “*the Respondent appears to dispute CAS jurisdiction*” and has made it explicit at the hearing that it relies on its jurisdictional objections. Furthermore, the Answer states that the Respondent “*asks the Panel to issue a ... reasoned decision addressing the substantive and procedural defences*”.

68. Section 22 of the SOC Statutes provides a list of “Duties of the Board”, which read as follows:

“§ Section 22 Duties of the Board

It is the responsibility of the Board to:

- a) implement the decisions of the General Assembly*
- b) be responsible for international Olympic cooperation*
- c) organize Sweden's participation in the Olympics in close cooperation with the OSF*
- d) decide on the selection of Olympic participants following proposals from and consultations with the OSF*
- e) appoint the central management of the Swedish participation in the Olympic Games*
- f) submit requests for appropriations for the next financial year*
- g) take other measures to obtain funds for Olympic preparations and other Olympic purposes*
- h) support the sporting Olympic preparations and also otherwise work for performance development in Swedish elite sport*
- i) be responsible for the management and accounts of the SOC*
- j) draw up a proposal for the direction of activities for the current and next financial year to be submitted to the annual meeting*
- k) draw up the business plan and budget*
- l) draw up the annual report and the annual accounts for the last financial year to be submitted to the annual meeting*
- m) where necessary, appoint the Secretary-General and the necessary staff and issue rules for their work*
- n) deal with other routine matters*
- o) decide on guidelines for and delegation of day-to-day work*
- p) prepare the question of membership of the RSF*
- q) establish a code of conduct”.*

69. It follows from the above provision that the selection of the athletes for the Games is a matter falling within the competence of the SOC Board. Consequently, the act (be it a decision or not) to select or not to select an athlete is attributable to the SOC Board. Thus, in the Panel’s view, it has jurisdiction to adjudicate the appeal lodged by the Appellants against both the 3 July Decision and the Press Release of the SOC Statutes.

VI. ADMISSIBILITY

70. With regards to the admissibility of the present dispute, the Panel will assess the following:
- a) Whether the appeal has been filed in a timely manner;

- b) Whether the Appellants have exhausted all means of internal recourse; and
- c) Whether the 3 July Decision and the Press Release qualifies as a “decision” within the meaning of Article R47 of the CAS Code.

A. Timeliness of the Appeal

71. Article R49 of the CAS Code provides – in its pertinent parts – as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

72. The Appellants filed the Statement of Appeal on 12 July 2024, which was nine (9) and seven (7) days, respectively, after receipt of the 3 July Decision and the Press Release dated 5 July 2024. The appeals based on the 3 July Decision and the Press Release would fall under the 21-day time-limit for the Statement of Appeal to be filed under Article R49 of the CAS Code. The Panel, therefore, finds that the appeal is timely filed.

B. Exhaustion of Legal Remedies

73. The Parties are not in dispute that the Appellants exhausted all means of internal recourse before lodging the appeal to the CAS.

C. Appeal Against a “Decision”

74. The Parties are in dispute regarding whether the Press Release qualifies as a “decision” within the meaning of Article R47 of the CAS Code. The SOC contends that a Press Release is not a “decision”.

75. Mr. Bengtson clarified at the hearing that the Press Release was the first time he received an answer from the SOC on the compliance of the SOC Rules with the Olympic Charter. Mr. Bengtson maintains that, on that basis, Section 30 of the SOC Statutes, which stipulates that all disputes pertaining to the Swedish Olympics are to be “*determined by the SOC Board*”, are appealable to the CAS under Section 31 of the SOC Statutes.

76. There is abundant CAS jurisprudence on what constitutes a “decision” within the meaning of Article R47 of the CAS Code (CAS 2004/A/659; CAS 2004/A/748; CAS 2005/A/899; CAS 2008/A/1633; CAS 2013/A/3148; CAS 2014/A/3744 & 3766). According thereto the characteristic features of a decision may be described as follows:

- the term “decision” must be construed in a large sense;
- the form of the communication in question is irrelevant for its qualification;
- in principle, for a communication to be qualified as a decision, the communication must contain a ruling, whereby the body issuing the decision

intends to affect the legal situation of the addressee of the decision or other parties;

- a decision is a unilateral act, sent to one or more determined recipients that is intended to produce or produces legal effect.

77. Whether an act of a sports organisation qualifies as a decision is not a matter of form, but of substance. Consequently, the form and/or denomination of the challenged act are not decisive, but – at the most – a rebuttable indication. Below are a few examples of this jurisprudence:

“With respect to the characterization of a decision, the Panel agrees with the criteria laid down in CAS 2005/A/899, referred to by the Respondent, insofar as CAS considered that ‘... the form of a communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal’ and that ‘In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility of a request, without addressing the merits of such request’” (CAS 2007A/1251, no. 4).

“Based on the above, the Panel believes that an appealable decision of a sport association or federation ‘is normally a communication of the association directed to a party and based on an animus decidendi, i.e. an intention of a body of the association to decide on a matter [...]. A simple information, which does not contain any „ruling“, cannot be considered a decision’. (BERNASCONI M., When is a „decision“ an appealable decision?, in: RIGOZZI/BERNASCONI (eds.), The Proceedings before the CAS, Bern 2007, p. 273)” (CAS 2008/A/1633, no. 11)” (CAS 2008/A/1633, no. 11).

78. In view of the above criteria, the Panel finds that both the 3 July Decision (which concerns the Track and Field Athletes) and the Press Release are “decisions” within the meaning of Article R47 of the CAS Code. It is true that the Press Release concerns a communication to the wider public on the selection of the “117 athletes from 19 different sports”. However, this Press Release – in substance – pertains to an underlying decision made by the SOC on the selection of athletes for the Games, and *vice versa*, the non-selection of Mr. Emil Bengtson. Thus, the Press Release has the potential of affecting the legal situation of all the athletes selected and not selected.

VII. THE APPLICABLE LAW

79. Article R58 of the CAS Code stipulates that,

“[t]he 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

80. In the present case, it is not disputed that the applicable regulations to be applied are

first and foremost the Olympic Charter, the SOC Statutes, and the SOC Rules. The Panel notes that the Parties did not make any submission on the subsidiarily applicable law. Furthermore, there is no evidence on file that the Parties have entered into any choice-of-law agreement regarding the dispute. Absent any rules of law chosen by the Parties, the Panel shall subsidiarily apply “*the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or ... to the rules of law that the Panel deems appropriate*”. The Panel will address that question in the context of the merits.

VIII. SCOPE OF REVIEW

81. Article R57 of the CAS Code provides – in its pertinent parts – as follows:

“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”.

82. Pursuant to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

IX. MERITS

83. The Panel takes note of the Appellants’ requests for relief, which read – *inter alia* – as follows:

“The Appellant’s request that ...

(a) The selection criteria for participation in the Olympic Games decided by the IOC shall apply.

(b) The SOC or Swedish sports federations may not adopt their own selection criteria for the selection of participants in the Olympic Games or amend/modify/change the selection criteria of the IOC.

(c) If the SOC or Swedish sports federations are not allowed to decide on their own selection criteria, such Criterias constitutes a breach or non-compliance with the Charter according to Rule 1.4 of the Charter” (sic).

84. The merits of the present dispute pivot around the question whether the SOC has authority to issue supplementary, national-specific rules (the SOC Rules) for the Games, or whether the SOC is bound to only apply the Qualification Systems set by the IFs for the respective sports (and approved by the IOC).

85. The Respondent submits that what the Appellants seek is “*to appeal against, and to overturn or rewrite, the SOC’s selection criteria that were adopted at the general assembly of the SOC in April 2023 ... However, there is no right to appeal to CAS against a decision of the general assembly of the SOC, In any event, such an appeal would be out of time*”.

86. The Panel notes that the SOC Rules are not addressed to the athletes, but only to the sport entities involved in the national selection process. To this end, the SOC Rules provide as follows:

“These nomination limits and level ranges should be seen as guidelines for the national team captain to be able to nominate the active, but is not automatically a clear Olympic selection. The SOC makes the final decision on selection”.

87. Like the World Sailing QS, the World Athletics QS or the Olympic Charter, the SOC Rules also are not intended to grant a right or alter the legal position of the individual athletes. Instead, the SOC Rules are purely intended as internal administrative instructions for the sports bodies involved in the national nomination process. Furthermore, the Panel notes that athletes are not members of the SOC. Section 3.2 of the SOC Statutes provides as follows:

“The SOC is composed of the following members:

- 1.) Swedish sports federations that are directly or indirectly affiliated to international federations that organize sport(s) included in the Olympic programme. Such a sports federation is referred to as the Olympic Special Sports Federation (OSF)*
- 2.) Swedish member of the IOC according to OC*
- 3.) Swedish sports federations that are recognized by the IOC and are members of the RF and approved by the annual meeting of the SOC. Such a sports federation is called Recognized Special Sports Federation (RSF)*
- 4.) two representatives of the Active Committee, appointed by the Active Committee, these representatives being active participants in the Olympic Games during the last 12 years”.*

88. The Panel is mindful that the SOC Rules have been issued by the SOC General Assembly. Thus, the SOC Rules as such cannot be directly challenged by the athletes, since they have no standing as an addressee of these provisions or as a member of the SOC. If, however, the SOC Rules cannot be made the subject of an appeal directly by the Appellants, the latter cannot be barred from requesting an incidental review of these rules in the context of an appeal against a decision of the SOC not to nominate them based on the SOC Rules. It is self-evident that the SOC Rules cannot enjoy immunity from judicial review vis-à-vis the athletes.

A. The Parties' Positions

89. The main arguments raised by the Appellants are that the SOC has no authority under the Olympic Charter to create supplementary selection criteria through the SOC Rules:
- Bye-law 40.1 of the Olympic Charter sets out the main rules on eligibility, which stipulates only that the IFs establish qualification rules, not the NOCs.
 - The NOCs are only empowered to “apply” the approved Qualification Systems under Bye-law 40.1 of the Olympic Charter.
 - Rules 27.2 and 27.7 of the Olympic Charter stipulate that NOCs have certain tasks and rights but no unregulated residual competence such as issuing supplementary selection criteria. As such, the criteria issued by the SOC are a violation of Rule 1.4 of the Olympic Charter.

90. On the other hand, the SOC maintains that it has authority under the Olympic Charter to apply the SOC Rules as part of its criteria for the selection of athletes to represent Sweden at the Games:
- Under Rule 27.7.2 of the Olympic Charter, the SOC has the exclusive right to “*send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter*”, when read together with Rule 44.2 of the Olympic Charter.
 - Rule 27.3 of the Olympic Charter which stipulates that “*each NOC is obliged to participate in the Games of the Olympiad by sending athletes*” does not mean that the SOC is obliged to name all athletes who have met the SOC qualification system standard to the Swedish Olympic team, but rather merely precludes possibilities of boycott or refusal to participate by NOCs in the said Games.
 - Under Rule 44.5 of the Olympic Charter, the SOC can send to the Games only competitors who are “*adequately prepared for high level international competition*”.
 - Under Rule 44.3 of the Olympic Charter, “[n]obody is entitled as of right to participate in the Olympic Games”.
 - Other NOCs such as the New Zealand Olympic Committee, NOC Netherlands, and British Olympic Association, have similar supplementary rules for the selection of their athletes for the Games.

B. The Relationship Between the Olympic Charter and the SOC Rules and Regulations

91. Section 1 of the SOC Statutes reads – *inter alia* – as follows:

“The Swedish Olympic Committee (SOC) is the Swedish sports movement's highest body in Olympic matters.

The SOC's task is to promote and protect the Olympic Movement in Sweden in accordance with the provisions of the Statutes of the International Olympic Committee (IOC), the Olympic Charter (OC) and in accordance with other decisions taken by the IOC. The SOC's task is also to promote Sweden's interests within the Olympic Movement internationally ...

The SOC shall promote the Olympic values of friendship, respect and the pursuit of excellence. The SOC shall ensure compliance with the ... [Olympic Charter] in Sweden”.

92. Furthermore, Section 27 of the SOC Statutes provides as follows:

“The SOC Statutes shall always be in conformity with the ... [Olympic Charter]. Should the SOC Statutes be inconsistent with the [Olympic Charter], the [Olympic Charter] shall prevail”.

93. It follows from the above provisions that there is a clear hierarchy of norms. The SOC has committed itself to follow the Olympic Charter, to ensure that its actions are in compliance with the Olympic Charter and that in case of conflict between the SOC rules

and regulations and the Olympic Charter, the latter shall prevail.

C. The Contents of the Olympic Charter

94. Whether the SOC Rules are in compliance with the Olympic Charter depends on the latter's contents, which must be determined through interpretation. Since the IOC is an association according to Swiss law (Articles 60 *et seq.* of the Swiss Civil Code), the Panel finds that the law applicable to the interpretation of the Olympic Charter shall be Swiss law (cf. also Articles 154, 155 lit. f of the Swiss Private International Law Act), being the law most appropriate to decide this question.

i) Principles applicable to the interpretation of the Olympic Charter

95. According to the jurisprudence of the Swiss Federal Tribunal ("SFT") the principles applicable to the interpretation of statutes and regulations of a Swiss association are as follows (SFT 4A_406/2021, consid. 4.3.1 seq.):

"4.3.1. Le Tribunal fédéral a interprété à l'égal d'une loi les statuts d'associations sportives majeures, comme l'UEFA, la FIFA, en particulier leurs clauses relatives à des questions de compétence (arrêts 4A_564/2020 du 7 juin 2021 consid. 6.4; 4A_490/2017 du 2 février 2018 consid. 3.3.2, 4A_600/2016 du 29 juin 2017 consid. 3.3.4.1). Il en a fait de même pour découvrir le sens de règles d'un niveau inférieur aux statuts édictées par une association sportive de cette importance (arrêt 4A_600/2016, précité, consid. 3.3.4.1). ... Aussi le recourant a-t-il raison de vouloir les interpréter conformément aux méthodes d'interprétation des lois.

4.3.2. Toute interprétation débute par la lettre de la loi (interprétation littérale), mais celle-ci n'est pas déterminante: encore faut-il qu'elle restitue la véritable portée de la norme, qui découle également de sa relation avec d'autres dispositions légales et de son contexte (interprétation systématique), du but poursuivi, singulièrement de l'intérêt protégé (interprétation téléologique), ainsi que de la volonté du législateur telle qu'elle résulte notamment des travaux préparatoires (interprétation historique). Le juge s'écartera d'un texte légal clair dans la mesure où les autres méthodes d'interprétation précitées montrent que ce texte ne correspond pas en tous points au sens véritable de la disposition visée et conduit à des résultats que le législateur ne peut avoir voulus, qui heurtent le sentiment de la justice ou le principe de l'égalité de traitement. En bref, le Tribunal fédéral ne privilégie aucune méthode d'interprétation et n'institue pas de hiérarchie, s'inspirant d'un pluralisme pragmatique pour rechercher le sens véritable de la norme (BGE 142 III 402 consid. 2.5.1 et les références citées; arrêt 4A_600/2016, précité, consid. 3.3.4.2)".

Free translation: 4.3.1. The Federal Court has interpreted the statutes of major sports associations, such as UEFA and FIFA, in the same way as a law, in particular their clauses relating to questions of jurisdiction (judgments 4A_564/2020 of 7 June 2021, recital 6.4; 4A_490/2017 of 2 February 2018, recital 3.3.2; 4A_600/2016 of 29 June 2017, recital 3.3.4.1). It did the same to discover the meaning of rules at a lower level than the statutes enacted by a sports association of this importance (judgment 4A_600/2016, cited above, recital 3.3.4.1). ... The appellant is therefore right to seek to interpret them in accordance with the methods of statutory interpretation.

4.3.2. Any interpretation begins with the letter of the law (literal interpretation), but this is not the decisive factor: it must also convey the true scope of the rule, which also derives from its relationship with other legal provisions and its context (systematic interpretation), from the aim pursued, in particular the interest protected (teleological interpretation), and from the legislator's intention as it emerges in particular from the preparatory work (historical

interpretation). The court will depart from a clear legal text insofar as the other methods of interpretation mentioned above show that this text does not correspond in all respects to the true meaning of the provision in question and leads to results that the legislator could not have intended, that offend the sense of justice or the principle of equal treatment. In short, the Federal Court does not favour any particular method of interpretation and does not establish a hierarchy, drawing on a pragmatic pluralism to seek out the true meaning of the provision (BGE 142 III 402 rec. 2.5.1 and the references cited; judgment 4A_600/2016, cited above, rec. 3.3.4.2).

ii) *Degree of autonomy granted to the NOCs under the Olympic Charter*

96. The starting point to determine the degree of autonomy granted to the NOCs (under the Olympic Charter) to select athletes for the Games is Rule 27.3 of the Olympic Charter. The provision reads as follows:

“The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and at the regional, continental or world multisports competitions patronised by the IOC. In addition, each NOC is obliged to participate in the Games of the Olympiad by sending athletes”.

97. The provision is broadly worded, granting the NOC “exclusive authority” when selecting the athletes to represent the respective country. This authority granted to the NOCs is reiterated in Rule 27.7.2 of the Olympic Charter according to which the NOCs have the “right to ... send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter”. The wide mandate granted to the NOC (“right”, “exclusive authority”) is only limited in Rule 27.3 of the Olympic Charter by the NOC’s obligation to participate in the competitions patronised by the IOC, *i.e.* the NOC must select athletes and send them to the respective competitions. This restriction, however, cannot be interpreted in a manner to require NOCs to send all athletes who fulfil the international qualification criteria to the Games. Such an interpretation would be in conflict with the first sentence of Rule 27.3 of the Olympic Charter granting “exclusive authority” to the NOC to select the athletes to represent the respective country. Furthermore, such interpretation would be difficult to reconcile with Rule 44.2 of the Olympic Charter which reads as follows:

“Only NOCs recognised by the IOC may submit entries for competitors in the Olympic Games”.

98. The above provision grants the exclusive power to submit the names of any athlete to participate in the Games to the respective NOC. The provision indicates that the NOC “may submit entries”. There is no obligation of the NOC to do so (even if certain sporting requirements have been met).
99. In conclusion, the scope of the second sentence of Rule 27.3 of the Olympic Charter is limited. The sentence only addresses situations such as boycotts of the Olympic Games. The Panel’s interpretation of Rule 27.3 of the Olympic Charter is also confirmed by CAS jurisprudence (CAS OG 20/05 para. 7.7; OG 22/007 para. 98):

CAS OG 20/05 para. 7.7: “At the national level, a National Olympic Committee (NOC) has the exclusive right to “send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter” (Rule 27.7.2 of the OC). According to CAS jurisprudence, “[i]t is not in issue that it is for a NOC to select its competitors for the Olympics. No other body or person within a member country has that right” (CAS OG 08/003)”.

CAS OG 22/007 para. 98: “Pursuant to the applicable rules of the Olympic Charter, the quota places for the Olympic Games are not allocated to specific athletes but to the NOCs. At national level, a national Olympic committee (NOC) has the exclusive right to “send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter” (Rule 27.7.2 of the OC). According to CAS jurisprudence, “[i]t is not in issue that it is for an NOC to select its competitors for the Olympics. No other body or person within a member country has that right” (CAS OG 08/03)”.

100. The exclusive right granted to the NOC to select athletes for the Games is not limited by any rights of the athletes, since Rule 44.3 of the Olympic Charter provides that “[n]obody is entitled as of right to participate in the Olympic Games”.
101. The right granted to the NOC to select athletes for the Games is, however, limited with respect to certain eligibility criteria that apply mandatorily. The latter are to be found – *inter alia* – in Rule 40.1 of the Olympic Charter. The provision reads as follows:

“To participate in the Olympic Games, a competitor, team official or other team personnel must respect and comply with the Olympic Charter, the World Anti-Doping Code and the Olympic Movement Code on the Prevention of the Manipulation of Competitions, including the conditions of participation established by the IOC, as well as with the rules of the relevant IF as approved by the IOC, and the competitor, team official or other team personnel must be entered by his NOC”.
102. Bye-Law 40.1. of the Olympic Charter clarifies that the “conditions of participation” include – amongst others – the “qualification criteria” established by the respective IF and approved by the IOC. The qualification criteria refer to sporting eligibility criteria established by the IFs and approved by the IOC. In the dispute at hand these “qualification criteria” are the World Sailing QS and the World Athletics QS.
103. Bye-Law 40.2 of the Olympic Charter further states that these qualification criteria must be mandatorily applied by the various stakeholders “*in the field of ... [their] respective responsibilities*”. Consequently, the NOCs must apply these qualification criteria (World Sailing QS and World Athletics QS) when selecting athletes for the Games according to Rules 27.2, 27.7.2 of the Olympic Charter. This means that, as a minimum, an NOC must assure that the athletes selected by the NOC meet the standards of these (international) qualification criteria.
104. The issue at stake here is whether these sporting eligibility criteria established by the IFs (and approved by the IOC) are to be understood not only as minimum, but also as maximum requirements, preventing the NOCs from establishing more restrictive qualification limits within their sphere of responsibility. The Panel notes that there is no rule in the Olympic Charter limiting the autonomy of the NOCs to issue qualification criteria for the Games that are more stringent than the ones established by the IFs within their sphere of authority. Absent any such provision, the default position would be that

the NOCs enjoy autonomy. This is all the more true considering that Rule 27.2 of the Olympic Charter refers to an “exclusive authority” and Rule 27.7 to a “right” of the NOC to select athletes for the Games. The view held by the Panel is further backed by Rule 44.5 of the Olympic Charter that reads as follows:

“The NOCs shall send to the Olympic Games only those competitors adequately prepared for high level international competition. Through its IF, a national federation may ask that the IOC Executive Board review a decision by an NOC in a matter of entries. The IOC Executive Board’s decision shall be final”.

105. The provision makes it clear that it is for the NOCs to assess whether an athlete is “adequately prepared for high level competition”, its authority not being limited to rubber stamp those athletes that fulfil the qualification criteria of the IFs (approved by the IOC).

106. The above understanding is also reflected in the Section 2.2 of the SOC Statutes and Section 1.4 of the SOC Rules. that provide as follows:

Section 2.2 SOC Statutes: *“The SOC shall decide on the registration of athletes for the Olympic Games on the basis of a proposal from the OSF (definition of OSF, see § 3). Such selection shall be based not only on the athlete’s sporting performance but also on the athlete’s ability to serve as a role model for Sweden’s young athletes”.*

Section 1.4 SOC Rules: *“International qualification or quota rules established by the IOC must be met for an athlete or team to be selected by the SOC, but do not in themselves give the go-ahead for participation in the Olympics. The SOC may make a selection before international qualification has been completed on condition that this qualification is later passed”.*

107. Finally, the Panel notes that its construction of the Olympic Charter according to which the qualification criteria of the IFs (approved by the IOC) constitute only minimum and not maximum standards is also backed by the view held by other stakeholders of the Olympic Movement. Both World Sailing QS and World Athletics QS provide that NOCs may reject an earned quota place that had been awarded to that NOC based on the international qualification criteria. This, however, would not make any sense if the qualification criteria would have to be construed as a mandatory minimum and maximum standard.

108. Furthermore, the Panel notes that other NOCs also have enacted separate selection criteria for the Games that apply in addition to the qualification criteria of the IFs. They appear to construe the Olympic Charter to permit this. The Respondent has – *inter alia* – submitted the respective nomination rules for the United Kingdom and the Netherlands. The Panel wishes to highlight the rules applicable to the nomination of athletes for the Olympic Games in the United Kingdom. The provision describes the purpose of these rules in section 3.1. as follows:

“Publicly funded British sport is now a multi-million pound business receiving unparalleled investment from Government and the National Lottery, with the attendant external pressure and expectation to deliver results: there is, therefore, the requirement to act with integrity and professionalism to maintain the confidence of both the public and external investors, and all members of the WCP. For athletes,

and also coaches, increased funding and commercial opportunity means that selection or non-selection may have substantial financial consequences. It is reasonable for athletes to expect to be well informed, treated fairly, on merit and without discrimination”.

109. The provision describes why there cannot be any automatic rule that athletes who fulfil the international qualification criteria must be nominated for the Games. Instead, there are many more country-specific factors that may need to be assessed and taken into account by the national sporting body with the authority for sending athletes to the Games.
110. To conclude, therefore, the Panel finds that the only sensible construction of the Olympic Charter is that the qualification criteria established by the IFs and approved by the IOC constitute minimum standards only and that the NOCs have the autonomy to issue separate national qualification criteria, provided that they are no less rigorous (and may be more stringent) than the international qualification criteria and do not otherwise contradict the Olympic Charter.

D. Do the SOC Rules exceed the Autonomy Granted by the Olympic Charter?

111. The Appellants have based the alleged unlawfulness of the SOC Rules only on the ground that the SOC has no authority to issue separate qualification / eligibility criteria for the Games. The Panel has rejected this argument and finds that – based on the facts and evidence before it – there is no reason to assume that the SOC exceeded the autonomy granted by the Olympic Charter in any other way. The main purpose of the SOC Rules to – in principle – only select athletes who have “*shown such form that he/she is deemed capable of competing for at least twelfth place at the Olympic Games*” appears to be legitimate and proportionate. This is all the more true considering that the SOC Rules also provide for substantial exception to this principle (“Future Criterion” and “Exception Criteria”) in order to take into account the individual circumstances of a specific case.

E. Did the SOC Apply the SOC Rules Correctly?

112. The Appellants have not submitted that the SOC has misapplied the SOC Rules to them or applied them in an arbitrary manner. Based on the facts and evidence before it, the Panel finds no reason to assume that the SOC misapplied the SOC Rules incorrectly to the Appellants or in an arbitrary manner.

F. Conclusion

113. To conclude, the Panel finds that the SOC has the authority to issue separate nomination criteria for the Games within its sphere of responsibility and that the SOC Rules comply with the Olympic Charter. Consequently, the appeal filed by the Appellants must be dismissed and the Panel does not need to address any of the other objections raised by the Respondent against the present appeal.

X. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 12 July 2024 by Emil Bengtson, Sara Lennman, Rebecka Hallerth, Simon Sundström, Yolanda Ngarambe, Leo Magnusson against the Swedish Olympic Committee to order the Swedish Olympic Committee:
 - to register the Appellants for participation in the Paris 2024 Olympic Games for Sweden and
 - to request the International Olympic Committee to either withdraw the spots allocated according to Rule 44 of the Olympic Charter or to increase the number of participants
- is dismissed.
2. (...).
 3. (...).
 4. All other and further motions or prayers for relief are dismissed.

Seat of the arbitration: Lausanne, Switzerland
Date: 26 February 2025
(Operative part notified on 26 July 2024)

THE COURT OF ARBITRATION FOR SPORT

Ulrich Haas
President of the Panel

James Carter
Arbitrator

Klaus Reichert SC
Arbitrator