



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

**COURT OF ARBITRATION FOR SPORT (CAS)
Ad Hoc Division – Games of the XXXIII Olympiad in Paris**

sitting in the following composition:

President: Ms Carine Dupeyron, France
Arbitrators: Mr Roberto Moreno
Dr Heiner Kahlert

AWARD

in the arbitration between

Ms Jitka Čábelická(the "Applicant")

and

ČESKÝ SVAZ CYKLISTIKY z.s.....(the "First Respondent")

ČESKÝ OLYMPIJSKÝ VÝBOR (the "Second Respondent")

Union Cycliste Internationale (the "First Interested Party")

Ms Adéla Holubová (the "Second Interested Party")

I. PARTIES

1. The Applicant is Ms Jitka Čábelická, a Czech professional cross-country mountain bike cyclist.
2. The First Respondent is the ČESKÝ SVAZ CYKLISTIKY z.s., that is the Czech Cycling Federation (the “CCF”).
3. The Second Respondent is the ČESKÝ OLYMPIJSKÝ VÝBOR, that is the Czech Olympic Committee (the “COC”).
4. The First Interested Party is the Union Cycliste Internationale, the international federation for cycling (the “UCI”).
5. The Second Interested Party is Ms Adéla Holubová, a Czech cross-country mountain bike cyclist.

II. FACTS

6. The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
7. On 1 November 2023, the CCF published on its official website the “*Nomination criteria for MTB 2024 Representation Olympic Games Paris 28-29 July 2024*” (“the Nomination Criteria”) signed by Mr Viktor Zapletal, the head coach of the Czech mountain bike national team (“the National Team Coach”).
8. These Nomination Criteria provide as follows:

“Women category Elite /U23 (nomination deadline: 17.6.2024):

“A” team Women category Elite /U23

1. competitors who placed at the World Championship, World Cup, European Championship XCO in cat. Elite of the 2023/2024 season up to 28th place
2. competitors who placed at the World Championship, World Cup, European Championship XCO in cat. U23 of the 2023/2024 season up to 6th place

So far, the criteria have been met by: Jitka Čábelická, Adéla Holubová, Patricie Srnská

“B” team Women category Elite/U23

1. placings in the World Championship, World Cup, European Championship, Czech Championship XCO in cat. Elite/U23 season 2023

- Simona Spěšná, Nela Viktorová, Aneta Novotná, Jana Czeckinkarová

- Team "B" may be supplemented with additional riders based on the results of the 2024 UCI season races until the "Long List of COC" will be closed.

The nomination of an "A" team rider for an Olympic race will be based on the following criteria:

1. competitors who placed at the World Championship, World Cup, European Championship XCO in cat. Elite of the 2023/2024 season up to 28th place
2. competitors who placed at the World Championship, World Cup, European Championship XCO in cat. U23 of the 2023/2024 season up to 6th place
3. assessment of mutual performance in the 2024 Czech cup races (Touškov, Zadov, Bedřichov)

(The nomination will be based on a comprehensive assessment of results in the following sequence of importance of events: World cup, European championship, Czech cup)

Provisions:

The nomination proposed by the national team coach will be judged by a Coaches commission consisting of former national coaches Miloslav Hollosi, Jiří Lutovský, Jan Slavíček

- in case of disagreement the Commission will vote as follows: current national team coach 2 votes, former national team coaches 1 vote each

- 18.06.2024 The Coaches Commission will submit its proposal to the MTB Commission, which after voting will submit to the CCA Presidium the names of the participants and substitutes for the Olympic race in Paris 2024."

9. Further to the publication of the Nomination Criteria, the Applicant and/or Ms Adéla Holubová obtained the following results:

12 - 14 April 2024: World Cup at Mairiporã, Brazil, Women Elite: the Applicant finished 27th

4 May 2024: Czech Cup at Město Touškov, Czech Republic: Adéla Holubová finished 1st and the Applicant 2nd

12 May 2024: European Championship, Women Elite's: the Applicant finished 21th

18 May 2024: Czech Cup at Zadov, Czech Republic; the Applicant finished 6th and Adéla Holubová 7th.

10. On 29 May 2024, the National Team Coach sent the following email to the Applicant and other athletes:

"Hello, my friends,

based on the wording of the Nomination Criteria, after consultation and approval of the Coaches Committee for the Olympic Games Paris 2024 and after approval by the MTB CCF Commission, I hereby send you the following clarifications for the Olympic nomination for the Olympic Games Paris 2024:

[...]

Nomination in the category Women ELITE:

The national coach after consultation with the members of the Coaches Commission due to the equanimity of competitor's performances of the "A" team for the Olympic Games Paris:

Jitka Čabelická (GAPP System Kolofix)

Adéla Holubová (ROUVY Specialized)

Patricie Srnská (Nutrend Specialized SKR Racing)

and the fact that no athlete managed to achieve a significant international result in the 2024 season, which would go beyond the basic framework of the Nomination criteria, decided to extend the nomination deadline until after the CONSEQ Czech MTB XCO Cup in Bedřichov.

The nomination procedure will be as follows:

1. Immediately after finishing the women's race the Coaches Committee (Viktor Zapletal, Miloslav, Hollosi, Jiří Lutovský, Jan Slaviček) and representatives of the MTB Commission and CCF management (Josef Dlohoš and Petr Marek) will meet.

2. The national coach will submit to the aforementioned officials a nomination proposal for the athlete, who will participate in the Olympic competition, as well as a specification for the second and third substitute.

3. The Coaches Commission will vote on this proposal (see Nomination criteria for the Paris Olympics for the voting key) and based on the vote will set a nomination resolution, which will then be submitted to the members of the MTB CCF Commission for approval.

4. the approved nomination for the Women Elite race will be published no later than 12.06.2024."

11. On 8 June 2024, said Czech Cup race took place at Bedřichov, Czech Republic: Adéla Holubová finished 1st while the Applicant could not finish due to a technical problem.
12. On 9 June 2024, the National Team Coach sent the following email setting forth the decision of the CCF for "final nomination for the category Women Elite" (the "CCF Decision"):

"Hello, my friends,

based on the text of the Nomination criteria and in unanimous consent of the National team coach, the Coaches Committee for the Olympic Games Paris 2024 and the MTB CCF Commission, I am sending you the final nomination for the Olympic Games in Paris 2024:

[...]

Nomination for the category Women ELITE:

1. Adéla Holubová (ROUVY Specialized)

2. Jitka Čábelická (GAPP System Kolofix), first alternate for the Paris 2024 Olympic Games

3. Patricie Srnská (Nutrend Specialized SKR Racing), second alternate for the Paris 2024 Olympic Games

The National team coach, the Coaches committee and the MTB Commission, before the Women's Elite category Czech Cup race in Bedřichov, proceeded from the fact that Jitka Čábelická and Adéla Holubová were the closest to the nomination. Patricie Srnská was not able to beat Adéla Holubová in the WC U23 race in a direct confrontation and because of that, she is the second alternate.

In the 2024 season:

Criterion number 1. was fulfilled by Jitka Čábelická, with the 27th place in the World Cup race in Brazil

(28th place was needed to meet the Nomination criteria).

Criterion number 2. the European championship race, in extreme conditions, Jitka Čábelická finished in 21st place with a loss of 1 lap, Adéla Holubová did not finish the U23 race

Criterion number 3. fulfilled by Adéla Holubová - mutual assessment of performance in mass start races, in equal starting position and in locations that all three drivers know well.

Jitka Čábelická, not even once, managed to defeat her opponents in a direct confrontation.

Adéla Holubová dominated the head- to- head confrontation in město Touškov and Bedřichov, and Patricia Srnská dominated the race in Zadov.

The unquestionable performance superiority of young female competitors also played a role in these races.

Adéla Holubová dominated the race in Touškov with a lead of 1:37 min ahead of Jitka Čábelická, in the race in Bedřichov Jitka Čábelická, before her withdrawal from the race, had the last officially measured time loss to Adéla Holubová: 1:23 min.

Taking into account the results of the direct confrontations, but also Adéla Holubová's position in the absolute world top of the U23 category and her placing in the WC XCO 2024 races in 8th, 13th and 17th place, the national team coach and the Coaches Committee in a mutual agreement proposed to the MTB Commission the above nomination in the women's category."

13. On 10 June 2024, Mr Pavel Čábelický, the Applicant's husband and the manager of her team, sent a "Request to investigate compliance with the nomination criteria of the Czech Cycling Federation and the subsequent nomination for the Summer Olympic Games Paris 2024 in the discipline MTB XCO Women Elite" to the COC Ombudsman ("the Ombudsman").
14. On 17 June 2024, the Ombudsman forwarded this request to the CCF President, asking for his statement "in accordance with the Provisions of the Czech Olympic Committee, especially with the article XIII., para. 5, let. a) to e)," in order to mediate the dispute.
15. On 1 July 2024, the COC Plenary Session approved the nomination of the Czech athletes for the 2024 Summer Olympic Games, among them Ms Adéla Holubová – but not the Applicant – for the Mountain Bike Cross-Country discipline (the "COC Decision").
16. On 2 July 2024, the Applicant, through her legal counsel, sent to the Control Commission of the CCF (the "Control Commission") and to the CFF Executive Committee a "Request

to revise the procedure of the Commission of Coaches and the MTB Commission related to the nomination to the 2024 SOG in Paris for the discipline of cross-country mountain biking in the category Women Elite- Jitka Čábelická”.

17. On 2 July 2023, the CCF President replied to the Ombudsman and explained that, during the nomination period, they were in a situation where the Applicant fulfilled criterion (1) while Adéla Holubová fulfilled criterion (3), as she won the CP race in Touškov with a lead of 1:37 minutes over the Applicant. The email of 29 May 2024 was thus sent to all competitors to inform them that *“the final nomination would be decided on the basis of the result of the Czech Cup in Bedřichov”*. This was not *“an additional part of nomination”* as alleged by the Applicant but an integral part of the Nomination Criterion. Adéla Holubová won that race and the Coaches Committee decided to nominate her. The CCF President specified that the Coaches Committee also considered that when the Applicant *“fulfilled criterion 1) (she took 27th place, while the nomination limit was set up to 28th place), but Adéla Holubová beat Jitka Čábelická more than once in the Czech Cup races. Adéla Holubová won the Czech Cup races twice, Jitka Čábelická not a single one”* and that the vote was *“unambiguous”*.
18. On 3 July 2024, the CFF President answered as follows to the Applicant’s request of 2 July 2024:

“I hereby confirm the receipt of your submission to investigate the nomination of Jitka Čábelická in the MTB XCO discipline for the 2024 Olympic Games in the Women Elite category. I have forwarded your request to the Control Committee of the Czech Cycling Federation for consideration”.
19. On 10 July 2024, the CFF published a press release addressing allegedly misleading information from Mr Čábelický. The CFF publicly explained why it would have *“respect[ed] the Olympic ideas and [has been] guided by them when selecting the nominated riders”*.
20. On 11 July 2024, the Applicant sent to the UCI a copy of its letter of 2 July 2024 to the CCF Control Commission and Executive Committee. She explained that, as she only received an acknowledgement of receipt of that letter, she asked the UCI to *“request the CCF proceed with the proper steps to expedite [their] case as the Olympics are rapidly approaching”*.
21. On 12 July 2024, the UCI replied that it understood that because this *“was an internal matter, the UCI [should] not be in a position to intervene”*. It finally invited the Applicant to address any questions regarding deadlines of the registration of athletes for Paris 2024 to the COC.
22. On 13 July 2024, the decision of the COC Plenary Session of 1 July 2024 was published on the COC’s website. This is when the Applicant became aware of the said decision.
23. On 15 July 2024, the Applicant wrote to the COC Ombudsman and to the COC Executive Committee requesting their *“cooperation in the matter of the review of the procedure of the [CCF] authorities in connection with the nomination for the 2024 Summer Olympic Games in Paris for the discipline of cross-country mountain biking in the Elite women’s category of elite women, for which the [COC] is the competent organization according to the UCI statement”*.

24. On 17 July 2024, the Ombudsman sent the following email to the Applicant:

“Due to the fact that the nomination for the Olympic Games in Paris was gradually discussed and approved by the bodies of the Czech Cycling Federation, the Executive Committee and finally the Plenum of the Czech Olympic Committee and on the basis of the suggestion of Mr. Pavel Čábelický, the Ombudsman of the Czech Olympic Committee, the Czech Olympic Committee Ombudsman considers the decisions of these bodies to be final and closed”.

25. On 23 July 2024, the Applicant filed the present case before the CAS Ad Hoc Division.

III. THE APPEALED DECISIONS

26. The Applicant identified in her Application, section 5, the decision of 17 July 2024 of the Ombudsman of the Czech Olympic Committee (“COC”) as the decision challenged.
27. However, in section 7 entitled “*Details of the Application*”, the Applicant describes her request for Arbitration as directed “*against the decisions of the Czech Cycling Federation and the Czech Olympic Committee in the matter of the nomination of athletes for the Women Elite category of cross-country mountain biking discipline at the 2024 Summer Olympic Games in Paris whereby, in the Appellant’s view, the Nomination Criteria set by the Czech Cycling Federation were unjustifiably changed during the nomination process for the 2024 Summer Olympic Games and the subsequent biased evaluation of the Nomination Criteria harmed the Applicant and her rights as an athlete*”. This is confirmed in her written submission which expressly mentions, in the title page, she is appealing the decisions of the CCF and the COC.

IV. THE CAS PROCEEDINGS

28. On 23 July 2024 at 5:52 pm (Paris time), the Applicant filed an Application with the CAS Ad Hoc Division against the Respondents with respect to the Ombudsman “decision” of 17 July 2024. The Applicant enclosed to her Application a “*Request for Arbitration against the decisions of the [CCF] and the [COC] in the matter of nomination of athletes for the Women Elite category of cross-country mountain biking at the 2024 Summer Olympic games in Paris*”. The UCI was designated as Interested Party.
29. On 23 July 2024 at 8:39 pm (Paris time), the CAS Ad Hoc Division notified the Application to the Respondents and invited them to provide the CAS Ad Hoc Division with the email address of Ms Adéla Holubová by 24 July 2024 at 9 am (Paris time).
30. Further to a request from the CAS Ad Hoc Division to all Parties, the Applicant, complying with such request, provided the email address of Ms Adéla Holubová on 24 July 2024 at 5:18 pm (Paris time).
31. On 24 July 2024 at 6:23 pm (Paris time), the CAS Ad Hoc Division informed Adéla Holubová of the present procedures and of her status as an Interested Party. She was provided with a copy of the Application, together with its exhibits.

32. On 25 July 2024 at 8:34 am (Paris time), the CAS Ad Hoc Division notified the Parties of the Arbitral Tribunal's composition as follows:

President: Ms Carine Dupeyron, France

Arbitrators: Mr Roberto Moreno, Paraguay

Dr Heiner Kahlert, Germany

33. Within the given time limit, the Respondents and the UCI filed their written submissions. The Second Interested Party did not file any written submissions.

34. On 25 July 2024 at 4:00 pm (Paris time), a hearing was held by videoconference with the participation of the following persons, in addition to the Panel and Ms Pauline Pellaux, Counsel to the CAS:

For the Applicant:

- Ms Jitka Čábelická, the Applicant
- Ms Markéta Vochoska Haindlová, Counsel
- Mr Jakub Porsch, Counsel
- Ms Silvie Ginterova, Interpreter

For the First Respondent:

- Mr Petr Marek, President
- Mr David Prusa, Vice-President
- Mr Michal Cap, Counsel

For the First Interested Party:

- Mr Patrick Wilson, Head of Legal, Compliance & Integrity Services
- Mr Antonio Rigozzi, Counsel

The Second Respondent and the Second Interested Party did not attend the hearing.

35. There were no objections to the composition of the Panel and the First Respondent, and the First Interested Party confirmed that they maintained their objection to jurisdiction.
36. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel.
37. On 26 July 2024 at 4:21 pm (Paris time), the Panel issued the operative part of the award, which was notified to the Parties and Interested Parties by the CAS Ad Hoc Division.

V. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

38. The Parties' submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered.

A. The Applicant

a. The Applicant's submissions on jurisdiction

39. The Applicant's arguments on jurisdiction may be summarised, in essence, as follows. To the extent necessary, the Applicant's detailed position is further detailed in the jurisdiction section below:

- Her Application complies with Article 1 of the CAS Ad Hoc rules as (i) the dispute arose 10 days before the Opening Ceremony and (ii) she exhausted all internal remedies.
- On the exhaustion of internal remedies, the Applicant explains that she filed a request to revise the decision made on 9 June 2024 to the Control Committee on 2 July 2024, but the latter committee failed to entertain her request. In June and July 2024, she also contacted the Ombudsman to obtain a revision of the CCF Decision, then she contacted directly the COC on 15 July 2024 for the same purpose. The only response she obtained to these requests was the Ombudsman's letter of 17 July 2024, which informed her that he considered that the decisions made by the CCF and the COC were "*final and closed*". Having exhausted the recourses offered to her by the CCF Statutes (the Control Committee) and the COC Statutes (the mediation via the Ombudsman which failed on 17 July 2024), her only "*possible course of action*" was to resort to the CAS Ad Hoc Division. The Applicant had therefore exhausted all internal remedies.
- Regarding jurisdiction *ratione temporis*, the Applicant argues that the only relevant date for the origin of the dispute is the date of her Application before CAS, which is within the 10-day window required in the CAS Ad Hoc arbitration rules. She also notes, against the argument that the dispute might have arisen prior to this window based on her prior correspondence, that where an athlete is faced with a poor procedure by national authorities in the matter of nomination of athletes, imperfect regulations and inadequate appeal and control mechanism, the CAS Ad Hoc Division provides the only available remedy. In any event, the Applicant notes that this 10-day period is not even consistent with Article 61 of the Olympic Charter, which does not set a condition of time.

b. The Applicant's submissions on the merits

40. The Applicant's arguments on the merits may be summarised, in essence, as follows:

- The Applicant first argues, as a matter of background, that there are doubts as to the objectivity of the Coaches Committee in the voting process for nomination and that their behavior was biased, contrary to the rules of fair play that shall prevail in line with the Olympic spirit.

- Second, the Applicant refers to the three criteria for nomination for the 2024 Summer Olympic Games which were published on 1st November 2024. These criteria referred to Elite and U23 rankings in the World Cup and the European Championship (as criteria 1. and 2.) and an assessment of mutual performance in 2024 Czech Cup races (as criterion 3.). She underscores that the publication also indicated that *“the nomination will be based on a comprehensive assessment of the results in the following sequence of importance of actions: World cup first, European championship, Czech cup”*. According to the Applicant, before the change described below, she was the only female Czech athlete fulfilling the Nomination Criteria.
- However, according to the Applicant, via his email dated 29 May 2024, the National Team Coach unjustifiably modified the Nomination Criteria, putting the emphasis only on one race of the C1 category of the Czech Cup that would take place on 8 June 2024. This change fundamentally interfered with the valid Nomination Criteria of 1st November 2023 and was irrational as it placed one single event of a lower category above long-term performance and more competitive races such as the rankings at the World Cup and European Championship. This change also denied long-term assessment of performance. Overall, it violated the principle of legal certainty, since the Athlete had adapted her sport preparation to these Nomination Criteria, focusing on the higher category of races as opposed to local races.
- Moreover, the reasoning supporting the change in the Nomination Criteria and the decision not to nominate the Applicant was incorrect and unsubstantiated: there was, in fact, equality on 2 out of 3 of the Czech races and the time difference cited by the National coach between the two athletes omitted to take into consideration that the Applicant had technical problems and, in the end, withdrew from the race. Overall, it is illogical to give a greater importance to Czech races in locations familiar to the athletes whereas the 2024 Olympic Games will take place elsewhere, in unfamiliar places.

c. *The Applicant’s requests for relief*

41. The Applicant requests the CAS Ad Hoc Division to rule as follows:

“In any case:

A. to rule that the Czech Cycling Federation and the Czech Olympic Committee did not proceed properly in the nomination process for the 2024 Summer Olympic Games in Paris for the discipline of cross-country mountain biking in the Women Elite category and did not respect the Nomination Criteria accordingly, thus damaging the athlete, Mrs. Jitka Čábelická;

and

B. to rule that the Czech Cycling Federation and the Czech Olympic Committee are obliged to reconsider the nomination for the 2024 Summer Olympic Games in Paris for the discipline of cross-country mountain biking in the Women Elite category and ensure the nomination of Mrs. Jitka Čábelická;

alternatively

C. to rule that the Czech Cycling Federation and the Czech Olympic Committee are obliged to compensate Mrs. Jitka Čábelická for the costs associated with the preparation for the 2024 Summer Olympic Games in Paris for the discipline of cross-country mountain biking in the Women Elite category and for the non-pecuniary damage caused by the erroneous procedure in connection with the nomination for the 2024 Summer Olympic Games in Paris.”

B. The First Respondent

a. The First Respondent’s submissions on jurisdiction

42. On jurisdiction, the First Respondent submits that the Applicant does not challenge the Ombudsman decision as presented in her Application but rather the CCF Decision of 9 June 2024, which is outside of the temporal jurisdiction of the CAS Ad Hoc Division.

43. Moreover, when the Applicant filed her request to review the nomination process before the Control Committee, she failed to pay the required (and modest) filing fee, and therefore her request could not be handled. The First Respondent also notes that the MTB Commission of the CCF, which nominated Ms Hobulova, is subordinate to the CCF Presidium, which did not itself receive any complaint or submission by the Applicant. Hence, the Applicant also failed to comply with the requirement of the exhaustion of internal remedies.

b. The First Respondent’s submission on the merits

44. The First Respondent first notes that the Applicant did not challenge the alleged modification of the Nomination Criteria when they were published on 29 May 2024, but rather did so only when she was not successful in the Bedřichov race where she withdrew, due a technical problem.

45. Regarding the Nomination Criteria, the First Respondent insists that they referred twice to a complex assessment of results of the World Cup, the European Championship and the Czech Cup. This complex assessment means that two wins in the Czech Cup (UCI, C1) are a heavier weight than only one ranking of the Applicant at the World Cup. The First Respondent also submits that on the domestic level, Ms Holubová won over the Applicant more than *vice versa*, while the two athletes never competed against each other on the international level (as they belong to two different categories, Elite and U23).

46. The First Respondent concludes that this application is unfair to Ms Holubová, and a misuse of the CAS Ad Hoc Division.

c. The First Respondent’s requests for relief

47. The First Respondent request as follows:

“The Request shall be dismissed at full and the First Respondent shall be awarded the costs.

The Request is inadmissible as the dispute clearly arose more than 10 days before the Opening Ceremony of the Olympic Games – Article 1 (1) of the Rules. Even if it is

admissible, which is denied, the Applicant did not meet criteria of Article 1 (2) of the Rules, as wrongly suggested (paras 14, 31 of the Request)."

C. The Second Respondent

48. The Second Respondent challenged the jurisdiction of the CAS Ad Hoc Division, submitting that the dispute did not arise within 10-day period, since the nomination decision by the CCF was taken on 18 June 2024, and the COC Decision was adopted by the Plenum on 1 July 2024.

D. The First Interested Party

49. The UCI contested the jurisdiction of the CAS Ad Hoc Division only, for the following reasons:
50. The dispute did not arise within the 10-day period preceding the Olympic Games' Ceremony provided for in Article 1(1) of the CAS Ad Hoc Rules, as the dispute did not arise when the Applicant received the Ombudsman's letter of 17 July 2024, but on 9 June 2024 when she was informed of the CCF Decision. The dispute then crystallized with the COC Decision, which was taken at the NOC Plenum session of 1st July 2024, which is also outside of the 10-day period required by the CAS Ad Hoc. The reference to the decision of the Ombudsman by the Applicant is irrelevant, as it is not a decision, the latter lacking decision-making powers.
51. Moreover, the Applicant did not exhaust internal remedies as it failed to pay the filing fee for the recourse against the CCF Decision. This procedure is an abuse of her right to resort to the CAS Ad Hoc Division: the Applicant should have gone to the ordinary CAS as provided for in the COC Statutes, which she did not do in time, i.e. within the 21 days provided for in the same Statutes.

E. The Second Interested Party

52. The Second Interested Party did not file any submission.

VI. JURISDICTION AND ADMISSIBILITY

53. The starting point for the analysis is Article 1 of the CAS Arbitration Rules for the Olympic Games (the "CAS Ad Hoc Rules"), which provides as follows:

"Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the

internal remedies available to her/him pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective.”

54. Hence, Article 1 of the CAS Ad Hoc Rules establishes that the following requirements must be met for CAS to have jurisdiction:
- (i) The dispute must be covered by Rule 61 of the Olympic Charter.
 - (ii) The dispute must arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games (the “Ad Hoc Period”).
 - (iii) Moreover, but *only* for appeal cases (“against a decision”), the applicant must have exhausted any internal remedies available to her.
55. Both Respondents, supported by the First Interested Party, have objected to the jurisdiction of the Ad Hoc Division of the CAS. Specifically, both Respondents argue that jurisdictional requirement (ii) is not met, and the First Respondent further submits that jurisdictional requirement (iii) likewise is not fulfilled.
56. None of the Respondents (and neither of the Interested Parties) have alleged that jurisdictional requirement (i) is not met. Under Swiss arbitration law, it is disputed whether an arbitral tribunal shall, once an objection to its jurisdiction is raised, examine its jurisdiction *ex officio* also in respect of other potential grounds for lack of jurisdiction, or whether the arbitral tribunal should examine only those grounds invoked by the respondent(s) (this question was left open by the Swiss Federal Tribunal in ATF 128 III 50, at E.2c/bb/cc; cf., however, also ATF 142 III 239 E.3.1; see also KAUFMANN-KOHLER/RIGOZZI, *International Arbitration: Law and Practice in Switzerland*, 2015, para. 5.15; BERGER/KELLERHALS, *International and Domestic Arbitration in Switzerland*, 4th edition, 2022, para. 697). The Panel finds that it can leave this question open because, as will be demonstrated in section A. below, requirement (i) is met in any event.
57. Therefore, in the following subsections A. to C., the Panel will deal with all three jurisdictional requirements.

A. Dispute within the meaning of Rule 61 of the Olympic Charter

58. Rule 61(2) of the Olympic Charter provides as follows:

“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.”

59. The present dispute is whether the Applicant should have been nominated to the Olympic Games. This is, no doubt, a dispute arising in connection with the Olympic Games and, thus, a dispute covered by Rule 61(2) of the Olympic Charter (to the same effect, *ex multis*, CAS OG 06/01, para. 8; CAS OG 06/02, para. 15; CAS OG 22/02, para. 5.8).
60. Consequently, jurisdictional requirement (i) set out above (*supra*, at para.54) is met.

B. Exhaustion of internal remedies

61. Article 1(2) of the CAS Ad Hoc Rules requires an applicant to exhaust any internal remedies before filing an application with the Ad Hoc Division, but only under two cumulative conditions:
- (i) The application is filed against a decision pronounced by the International Olympic Committee (the “IOC”), a National Olympic Committee (a “NOC”), an International Federation (an “IF”) or an Organising Committee for the Olympic Games (an “OCOG”), and
 - (ii) The time needed to exhaust the internal remedies would make the appeal to the Ad Hoc Division ineffective.
62. As regards the CCF Decision not to nominate the Applicant towards the COC, the first condition mentioned *supra*, at para. 61(i), is not met because the national federation governing the relevant sport is not among the entities listed in Article 1(2) of the CAS Ad Hoc Rules.
63. However, the COC Decision is a decision of a NOC and, therefore, falls under the exhaustion of remedies requirement of Article 1(2) of the CAS Ad Hoc Rules.
64. In this regard, the Panel refers to Article XVIII(2) of the COC Statutes, which set forth the remedies against decision taken at the COC Plenary Sessions, as follows:
- “Any final decision of the COC Plenary Session and any disputed matters relating to sport or institutional and administrative matters that cannot be resolved amicably through the COC Ombudsman may be submitted exclusively by way of appeal to the Court of Arbitration for Sports (CAS) in Lausanne, Switzerland, which shall finally hear the dispute in accordance with the Code of Arbitration for Sport. The time limit for appeal is 21 days from the date of delivery of the relevant decision”* (emphasis added by the Panel).
65. This shall be read in conjunction with Article XIII(5) of the COC Statutes, which establishes the functions and competence of the Ombudsman within the Czech Olympic system:
- “The Ombudsman of the COC: a) **mediates disputes** solving, b) acts as a protector of the rights of the members of the COC, protects the members of the COC against inaction of the bodies of sports entities and members of the COC regarding their rights guaranteed by the Olympic Charter, the IOC Code of Ethics and other IOC regulations, the COC Statutes and other COC regulations, c) is entitled in the event of disregard or violation of legal and other standards of the IOC and the COC or other misconduct, **to address the bodies of the COC and the bodies of its members and to demand remedies**, d) confirms the validity of the election of the Athletes’ Commission representative pursuant to Article III, paragraph 2, letter (b) and Article IX, paragraph 2, letter (f) of these Statutes, e) exercises the powers and authority under the IOC Code of Ethics within the COC”* (emphasis added by the Panel).
66. Based on these two provisions, the Panel is of the view that the Ombudsman’s amicable procedure equally applies to “[a]ny final decision of the COC Plenary Session”

and to “*disputed matters*”. This entails that, before submitting a case to CAS regarding “*any final decision*” of the COC Plenary Session, the affected party must go through, necessarily, the Ombudsman.

67. The Panel submits that, in a hypothetical case of a normal appeals case of a decision of the COC Plenary Session (that is, one that falls outside the domain of the Olympic Games), this Article entails that any affected party that submits its appeal to CAS, without going to the Ombudsman, would not have complied with the provision or Article R47 of the CAS Code, which requires that “*the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*”.
68. The Panel believes this interpretation also holds for an appeal before the CAS Ad Hoc Division procedure in the OG. Nothing in the wording of the COC Statutes suggests otherwise.
69. In the present circumstances, as recalled in the Facts section, at paras 13 and 23, the Applicant did reach to the Ombudsman, in several instances, throughout her whole discussion with authorities of the CCF in the first stage, then with the COC.
70. The last relevant step initiated by the Applicant was her letter to the Executive Committee of the COC and the Ombudsman of the COC, dated 15 July 2024, requesting again that the nomination decision be reconsidered.
71. It is that letter which generated an immediate reaction by the Ombudsman, on 17 July 2024, putting an end to his mediation efforts and informing the Applicant that her recourses (whether formal or amicable) before the CCF and the COC had all failed, as it concluded that:

*“Due to the fact that the nomination for the Olympic Games in Paris was gradually discussed and approved by the bodies of the Czech Cycling Federation, the Executive Committee and finally **the Plenum of the Czech Olympic Committee** and on the basis of the suggestion of Mr. Pavel Čábelický, the Ombudsman of the Czech Olympic Committee, the Czech Olympic Committee Ombudsman **considers the decisions of these bodies to be final and closed**”* (emphasis added by the Panel).

72. Therefore, it seems clear that this letter mentioned that the Ombudsman considered the internal proceedings as “*final and closed*”, thus opening the possibility to resort to CAS, per Article XVIII(2), “*by way of appeal*”. The Panel therefore finds that jurisdictional requirement (iii) at set out above (*supra*, at para. 54) is fulfilled.

C. Dispute arising no earlier than ten days prior to the Opening Ceremony

73. The calculation of the ten-day period is dependent upon the question of when the dispute arose. Interestingly, in numerous cases, the Ad Hoc Division found that a dispute arises when the decision with which the applicant disagrees is issued, provided that the date of issuance of the decision may be understood to be the date on which the applicant received the reasoning or other information/documentation necessary to understand or evaluate the decision (CAS OG 14/03, para. 5.28; CAS OG 20/06&08, para. 5.15; CAS OG 22/02; arguably also CAS OG 24/01, paras. 50, 53 and CAS OG 24/01, para. 46-48).

74. In the present circumstances, while the COC Decision was adopted on 1 July 2024, the Applicant became aware of it on 13 July 2024. On 15 July 2024, the Applicant then officially requested a reconsideration, including through the intervention of the Ombudsman in the context of Article XVIII(2), before the COC. The “final” character of the COC Decision and the subsequent decisions of the CCF and the COC not to re-examine her nomination were shared with her through the Ombudsman’s letter of 17 July 2024.
75. This is, in the Panel’s view, when the dispute arose in the sense of the CAS Ad Hoc Rules, that is when a recourse to CAS was open “*pursuant to the statutes or regulations of the sports body concerned*”.
76. Because the Opening Ceremony took place on 26 July 2024, the Ombudsman communication dated 17 July 2024 is inside the ten-day timeframe established by Article 1 of the CAS Ad Hoc Rules.
77. In sum: in light of all of the above-mentioned considerations, the Panel concludes that it has jurisdiction for this Application pursuant to the conditions established in Article 1 of the CAS Ad Hoc Rules.

VII. DISCUSSION ON THE MERITS

78. The Panel has examined all the element of the merits of this case, and particularly the Nomination Criteria published on 1 November 2024, the letter from the National Team Coach of 29 May 2024, and the decision made by the Coaches Committee and the MTB Commission on 9 June 2024, approved by the COC Plenum on 1 July 2024.
79. The Panel made its analysis in light of CAS and CAS Ad Hoc case law setting for the standards for reviewing selection by national federations. In short, that case law, which the Panel fully concurs with, states that the authority and discretion granted the national federations in making Olympic selections is broad and deep. Hence, if criteria for selection to the Olympic Games are adequately published and the national federation acts within its authority without abusing its discretion, an athlete will not succeed in contesting his/her non-selection. *A contrario*, there is a legal duty incumbent on the national federation not to be arbitrary, unfair or unreasonable in the application of objective selection criteria and in the exercise of subjective discretion for the selection.
80. In the present circumstances, and based on its review of the underlying evidence, the Panel is of the view that:
- The Nomination Criteria were published on 1 November 2024, and the CCF has a duty to observe these Nomination Criteria.
 - While the Nomination Criteria mention a sequence of importance, this does not appear to establish that in all circumstances, an athlete fulfilling criterion 1 (ranking in the World Cup or European Championship for the Elite or the U23 categories) automatically trumps an athlete fulfilling criterion 3 (mutual performance in domestic races). Instead, the notion of “*comprehensive assessment*” which is stated at the end of the description of the Nomination Criteria allows for further considerations, such as those taken into account by the CCF, *i.e.*, that the Applicant barely made criterion

1, Ms Holubová only barely missed criterion 2, and that for criterion 3, Ms Holubová beat the Applicant in face-to-face competition by 2:1 and « *dominated* » one of those races, while the Applicant did not win any of those races.

- The weight of one last local race for the selection of the athlete as suggested in the 29 May 2024 letter and as justified in the 9 June 2024 was a factor that was not predominant in the Nomination Criteria published in November 2024; however, the 29 May 2024 email cannot be described, as the Applicant does, as a fundamental and unfair change of the Nomination Criteria, because it essentially informed the athletes that, as at the date of that email, the competent bodies thought that an application of the Nomination Criteria was leading to a tie between the Applicant and Ms Holubová, whose international and domestic results were, in a “*comprehensive assessment*” comparable, and that tie would be broken based on the result of the last Czech Cup race. The Panel notes in that respect that the Applicant did not originally challenge what she later labelled as an unfair and biased alteration of the Nomination Criteria and, in fact, no such alteration is to be found to have existed.
- The Panel is further not convinced that bias and bad faith have been established merely on the basis that one of the Coaches in the Coaches Committee was also the Coach of Ms Holubová. He had one out of 5 votes, and the Panel does not see why the National Team Coach, who had two votes, would have voted for Ms Holubová simply because he himself was the coach of Ms Srnskán, who was only selected as a second substitute behind the Applicant.
- Finally, the Panel appreciates that the National Team Coach explained in detail in the last paragraphs of the CCF Decision the degree of discretion that was exercised in line with the Nomination Criteria in order to deal with a new situation of a “*growing competition of countries*” and more limited quota for the Elite category, all of which led to the CCF Decision.

81. On the basis of the foregoing, the Panel finds sufficient reasons to reject the application on the merits.

VIII. COSTS

82. According to Article 22 para. 1 of the CAS Ad Hoc Rules, the services of the CAS Ad Hoc Division “*are free of charge*”.

83. According to Article 22 para. 2 of the CAS Ad Hoc Rules, parties to CAS Ad Hoc proceedings “*shall pay their own costs of legal representation, experts, witnesses and interpreters*”.

IX. CONCLUSION

84. In view of the above considerations, the CAS Ad Hoc Division has jurisdiction but dismisses the Applicant’s application filed on 24 July 2024 on the merits.

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

The application filed by Jitka Čábelická on 23 July 2024 is rejected.

Operative part: Paris, 26 July 2024

Award with grounds: Paris, 31 July 2024

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Ms Carine Dupeyron
President of the Panel

Dr Heiner Kahlert
Arbitrator

Mr Robert Moreno
Arbitrator