



TAS / CAS

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

CAS 2024/A/10393 Thomas Koechlin v. International Canoe Federation (ICF)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Jordi López Batet, Attorney-at-Law, Barcelona, Spain
Arbitrators: Mr. Benoît Pasquier, Attorney-at-Law, Zurich, Switzerland
Mr. Massimo Coccia, Professor and Attorney-at-Law, Rome, Italy

in the arbitration between

Thomas Koechlin, Pau, France

Represented by Mr. Emmanuel Emery, Fribourg, Switzerland

Appellant

and

International Canoe Federation, Lausanne, Switzerland

Represented by Mr. Yvan Henzer, Libra Law, Lausanne, Switzerland

Respondent

I. THE PARTIES

1. Mr. Thomas Koechlin (the “Appellant” or the “Athlete”) is a Swiss athlete competing in canoe slalom.
2. The International Canoe Federation (the “Respondent” or “ICF”) is the international governing body for multidiscipline canoeing and paddling activities, with seat in Lausanne, Switzerland.
3. The Appellant and the Respondent will be hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. The elements set out below are a summary of the main relevant facts, as established on the basis of the written and oral submissions of the Parties, the exhibits produced as well as the evidence taken in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the ensuing legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, in its Award, reference is made only to the submissions and evidence the Panel considers necessary to explain its reasoning.
5. The Athlete participated in the ICF Canoe Slalom World Championships that took place in London (United Kingdom) from 19 to 24 September 2023 (the “World Championships” or the “Competition”).
6. In the semi-finals of the Competition, the Athlete received from the Competition judges a two-second penalty for touching a pole in gate number 3, in accordance with Article 10.8.1 of the ICF Canoe Slalom Competition Rules (edition 2023) (the “Competition Rules”).
7. Following an enquiry filed by SwissCanoe (the Swiss canoe national association) pursuant to article 11 of the Competition Rules, the Competition’s Chief Judge, after a video review of the gate passage, confirmed the aforementioned two-second penalty imposed on the Athlete.
8. On 27 September 2023, SwissCanoe sent a letter to the ICF in which it contended that, under its understanding of the applicable regulations, the Athlete was ahead of his Spanish opponent in the Competition, Mr. Luis Fernández (with whom he shared *ex aequo* the 20th place in the Competition), and thus had obtained for Switzerland the 12th quota place for the Paris 2024 Olympic Games. As such, SwissCanoe was ready to defend its case before the Court of Arbitration for Sport (“CAS”) if necessary.
9. On 14 November 2023, the Athlete’s counsel at the time, Mr. Jean Koechlin, sent a letter to the ICF in which he, in essence, (i) noted that the ICF, in spite of the SwissCanoe letter of 27 September 2023, had decided not to allocate the 12th quota of the Paris 2024

Olympic Games to Switzerland, (ii) contested the results of the Athlete's in the Competition and (iii) announced being instructed to challenge the penalty imposed on the Athlete and the aforementioned results before the CAS, even if the Athlete would not oppose to an amicable solution to the matter and even proposed some alternatives to such purpose. The Athlete's counsel announced that if no contact from the ICF was received within 10 days, he would bring the case to the CAS.

10. On 29 November 2023, the ICF, through its General Secretary Mr. Richard Pettit, responded to the Athlete's counsel letter as follows:

"I am writing to inform you that I have received your letter. I would like to note that an inquiry was raised by the Swiss team leader during the course of the competition, and I want to assure you that it has been addressed in accordance with the appropriate procedures."

11. On 30 January 2024, the Athlete sent a letter to the ICF Executive Committee entitled *"Request to the ICF Executive Committee to appoint a Court of Arbitration of the International Canoe Federation. Request to the Court of Arbitration of the International Canoe Federation"*, in which the following requests for relief were made:

"ON A PRELIMINARY BASIS"

As a preliminary matter, the ICF Executive Committee is requested to appoint an ICF Court of Arbitration within fifteen (15) days upon receipt of this request.

Having done so and after the Court of Arbitration procedures, the Court of Arbitration is requested to:

1. **MAINLY**

ADMIT the arbitrary nature of the judge's decision made at the ICF Canoe Slalom World Championships in LONDON which took place from September 19 to 24, 2023 against Mr KOECHLIN, decision which is in violation of the principle of good faith and contrary to the principles of the ICF rules according to which doubt must benefit the athlete;

CANCEL the 2 seconds penalty imposed on Mr KOECHLIN by mistake, arbitrarily and in violation of the principle of good faith, at the 3 gate of the semi-final of the ICF Canoe Slalom World Championships in LONDON which took place from September 19 to 24, 2023;

JUDGE that the annulment of this 2 seconds penalty will result in Mr KOECHLIN's ranking 17th of the semi-final of the ICF Canoe Slalom World Championships in LONDON;

JUDGE that Mr KOECHLIN's 17th ranking of the semi-finals of the ICF Canoe Slalom World Championships in LONDON qualifies Switzerland for the Olympic quota.

2. **IN THE ALTERNATIVE**

JUDGE that, in accordance with article 10.18.2 of the ICF Canoe Slalom Rules, in the event of a tie in the semi-final phase, which is a tie that cannot be resolved by applying article 10.18.1, because, by definition, there is only one run, the tie will be broken according to the ICF ranking.

JUDGE that:

- *Swiss competitor Thomas KOECHLIN's ICF ranking is 18th.*
- *The Spanish competitor's ICF ranking is 32nd.*

JUDGE that Mr Thomas KOECHLIN beats the Spanish competitor and finished in the 20th place in the semi-final of the ICF Canoe Slalom World Championships in LONDON.

JUDGE that, in application of rule D.1.3.3 Qualification system - Games of the XXXIII Olympiad - Paris 2024, according to which "The highest placed eligible athlete will obtain for their NOC an athlete quota place", Mr Thomas KOECHLIN obtains for Switzerland, the 12th quota place for the Paris 2024 Olympic Games.

3. **IN THE ALTERNATIVE**

JUDGE that the participation of Mr. Lewis GROOS in the Oceania Championships held from January 26 to 28, 2024 is unusual and calls into question the fairness and ethics of sport:

JUDGE that his participation cannot be taken into account in the ranking of the Oceania championships;

Therefore, JUDGE that Switzerland obtains the 12th quota place for the Paris 2024 Olympic Games.

IN ANY CASE

ORDER the ICF to pay the costs of the proceedings.”

12. On 14 February 2024, the ICF Secretary General responded to the Athlete’s request with a letter (the “Appealed Decision”) which in the pertinent part reads as follows:

“I hereby wish to provide the ICF's official response to your request of the 30 January for the ICF Executive Committee to appoint the ICF Court of Arbitration.

The ICF has examined your application in detail in the light of all the circumstances and the relevant legislation.

[...]

I. APPLICANT'S DISCUSSION

In the first instance, the Applicant submitted a contestation of the result of the semi-final of the ICF Event and the related decision.

APPLICANT'S REQUEST (SUMMARY)

Applicant requested:

- *the admission that the judge's decision at the ICF Event against the Athlete was made in violation of the principle of good faith and contrary to the principles of the ICF rules according to which doubt must benefit the Athlete,*
- *the cancellation of the 2 seconds penalty imposed,*
- *a judgement that due to the annulment of the 2 seconds penalty the Athlete's ranking changes,*
- *the judgement that due to the change in the ranking, Switzerland receives the Olympic quota.*

ICF RESPONSE

According to the ICF Competition Rules the results of the ICF Canoe Slalom World Championships in London from the 19 September – 24 September 2023 are final.

There has been an enquiry and a review by the Chief Judge according to Article 11.1 of the ICF Slalom Competition Rules.

Following the investigation of the enquiry the decision of the Chief Judge became a matter of fact and couldn't be protested further. (Article 11.1.9)

These facts were also described and admitted by the Applicant in its submission. The rules are unambiguous in this case. Beyond the aforementioned appeal possibility (which was provided, used and decided), there is simply no procedural rule that allows further challenging of the results of the competition.

Paragraph 44 of the Statutes also confirms the finality of the competition results, as it clearly states that an ICF Arbitration Panel can only be appointed in the case of a dispute that is not about the ICF competitions where the ICF Competition Rules apply.

In the light of the above, request for the appointment of the ICF Arbitration Panel is irrelevant.

II. APPLICANT'S DISCUSSION

"In the alternative, on the error in the application and interpretation of the ICF rules excluding Switzerland from the Olympic Quota."

APPLICANT'S REQUEST (SUMMARY)

In the alternative, the Applicant requested,

- *to judge that, in accordance with article 10.18.2 of the ICF Canoe Slalom Rules, in the event of a tie in the semi-finals phase, which is a tie that cannot be resolved by applying article 10.18.1, because, by definition, there is only one run the tie will be broken according to ICF ranking.*
- *to judge that the Athlete is ranking higher, and the Spanish athlete ranking lower,*
- *to judge that the Athlete beats the Spanish athlete and finished in the 20th place at the ICF Event,*
- *judge that in application of rule D.1.3.3 of the Qualification Rules, according to which "The highest placed eligible athlete will obtain for their NOC an athlete quota place", the Athlete obtains for Switzerland, the 12th quota place for the Paris 2024 Olympic Games".*

ICF RESPONSE

The qualification rules for the Games of the XXXIII Olympiad, Paris 2024 are sport rules established by the ICF but approved by the IOC Executive Board.

In line with Bye-law to Rule 40 of the Olympic Charter, the application of the qualification criteria lies with the International Federations, their affiliated National Federations and the National Olympic Committees in the fields of their respective responsibilities. They shall be considered as Parties regarding any quota allocation and any referring dispute.

Within their respective responsibilities the NOCs have the right to select and send competitors to the Olympic Games (Qualification Rules – B.3; B.2.3; Rule 27 7.2 Olympic Charter).

The Canoe Slalom Qualification system is clear in its wording that the Athletes are obtaining their NOC a quota place. (Slalom Qualification Rules B.3 & D 1.3.3.) The quota in question is not an individual quota which belongs to a certain athlete but a quota place for the respective National Olympic Committee.

When confirming a quota place the ICF informs the respective NOC and National Federation of their allocated quota places. (Canoe Slalom Qualification Rules E.1.1)

Also, according to the Qualification System Principles "Any dispute arising between an IF and an NOC in connection with the interpretation or execution of a qualification system should be resolved through direct consultation between the IF and the NOC."

It is clear from the aforementioned rules and the structure of the Olympic Games that an athlete cannot challenge the Olympic qualification system's interpretation by

himself and has no legal standing to claim a quota reallocation for his National Olympic Committee.

The Athlete simply cannot start a dispute (Statutes 44) and has no capacity to initiate legal proceedings on matters that fall within the competence of the NOC under the referring rules. He submitted his request alone via his lawyer, without the involvement of the respective National Olympic Committee or National Federation.

Nobody is entitled as of right to participate in the Olympic Games (Article 44.3 of the Olympic Charter.)

With regard to the absence of locus standi, the ICF rejects the applicant's requests.

Nevertheless, the ICF is ready to discuss the interpretation of the qualification rules with the involvement of the relevant Parties as defined by the respective rules.

Having stated the above, the ICF does not go into detail here on the interpretation of the rules.

III. APPLICANT'S DISCUSSION

As the third alternative, the Applicant submitted the following “On the actions of the Oceania Federations in obtaining the participation of an athlete in the Oceania Championships held from 26 to 28 January 2024”.

APPLICANT'S REQUEST (SUMMARY)

The Applicant requested to

- *judge that the participation of Mr. Lewis Groos in the Oceania Championships is unusual and calls into question the fairness and ethics of sport,*
- *judge that his participation cannot be taken into account in the ranking of the Oceania Championships,*
- *Judge that Switzerland obtains the 12th quota place for the Paris 2024 Olympic Games.*

ICF'S RESPONSE

According to Article 44 of the ICF Statutes: “In the case of a dispute, other than at ICF competitions where the ICF Competition Rules apply, a Court of Arbitration of the ICF will be appointed, consisting of three (3) Arbitrators.”

The Applicant by himself cannot be considered an interested Party to the dispute in respect of point III. either based on the applicable rules which were also mentioned previously, and which are not to be reiterated here. (Qualification Rules – B.3; Rule 27 7.2 Olympic Charter)

The rules for an athlete's participation in a qualification competition and the respective Federations' rights and responsibilities in connection with it are also clearly defined under the ICF competition rules.

The Applicant has no right to challenge the change of nationality and a participation of another athlete in order to claim a quota reallocation for an NOC who is not part of his procedural request.

Additionally, according to the ICF Competition Rules nationality change decisions of the ICF are considered final and binding and they are and were made in line with Article 1.5. of the ICF Competition Rules. The rules do not allow for further appeals.

Similarly, the ICF has no choice but to reject the Applicant's request, as he has no legal standing in this matter.

I hope that our answers to all your questions provide an adequate explanation and shed light on the key legal issues which prevent the ICF Arbitration Tribunal from being established in this case.

The ICF stands ready to discuss with the relevant parties any issues that may arise in relation to the interpretation of the qualification rules, should they so request."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 5 March 2024, the Athlete, SwissCanoe and the Swiss Olympic Association (the "Initial Appellants") challenged the Appealed Decision by filing a Statement of Appeal before the CAS against the ICF.
14. In the Statement of Appeal, which also served as the Appeal Brief, the Initial Appellants expressed their preference for a Sole Arbitrator to be appointed to resolve the dispute. However, they clarified that if the dispute was to be resolved by a three-member panel, they appointed Mr. Benoît Pasquier as arbitrator.
15. On 7 March 2024, the CAS Court Office notified the Statement of Appeal and Appeal Brief to the Respondent, took note that the Athlete had requested legal assistance and invited the Respondent (i) to indicate whether it agreed to submit the proceedings to a Sole Arbitrator, (ii) to file its Answer Brief and (iii) to state its position on the language of the proceedings.
16. On 11 March 2024, the Respondent sent a letter to the CAS Court Office in which it requested the proceedings to be conducted in English and a Panel of three arbitrators to be appointed to decide the dispute.
17. On 15 March 2024, the Initial Appellants insisted on the submission of the dispute to a Sole Arbitrator and informed the CAS Court Office that it would be practical that bilingual proceedings English-French be conducted.

18. On 27 March 2024, the CAS Court Office notified to the Parties the Order on Language issued by the President of the CAS Appeals Division in which she decided that English would be the language of the proceedings (even if the Statement of Appeal and the correspondence filed up to that date in French did not need to be translated), and also communicated that the President of the CAS Appeals Division had decided to submit the proceedings to a Panel composed of three arbitrators. Consequently, the Initial Appellants were invited to nominate an arbitrator.
19. On 28 March 2024, the Initial Appellants nominated Mr. Benoît Pasquier as arbitrator.
20. On 4 April 2024, the Respondent nominated Mr. Martin Schimke as arbitrator.
21. On 9 April 2024, the CAS Court Office informed the Parties that Mr. Martin Schimke did not accept his nomination as arbitrator and invited the Respondent to nominate another arbitrator.
22. On 11 April 2024, the Respondent nominated Mr. Massimo Coccia as arbitrator.
23. On 15 April 2024, Swiss Olympic Association and SwissCanoe withdrew from the proceedings with immediate effect.
24. On 16 April 2024, the CAS Court Office took note of said withdrawal and informed the Parties that the proceedings continued under the reference CAS 2024/A/10393 *Thomas Koechlin v. International Canoe Federation (ICF)*. It also invited the Respondent to file its Answer Brief.
25. On 2 May 2024, the Respondent filed its Answer.
26. On 3 May 2024, the CAS Court Office noted that the Respondent did not deem necessary to hold a hearing and invited the Appellant to inform whether he preferred a hearing be held in this matter or the Panel to decide the case based solely on the Parties' written submissions. The Parties were also invited to express their position as to holding a case management conference with the Panel.
27. On 10 May 2024, the Appellant communicated to the Panel his preference for a hearing and a case management conference to be held, and should the Panel decide not to hold a hearing, the Appellant requested an additional round of submissions be granted.
28. On 13 May 2024, pursuant to Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President: Mr. Jordi López Batet, Attorney-at-Law, Barcelona, Spain
Arbitrators: Mr. Benoît Pasquier, Attorney-at-Law, Zurich, Switzerland
Mr. Massimo Coccia, Professor and Attorney-at-Law, Rome, Italy
29. On 15 May 2024, the CAS Court Office communicated to the Parties that the Panel had decided to hold a hearing by videoconference.

30. On 16 May 2024, the Parties were informed that the hearing would take place on 23 May 2024.
31. On 20 and 21 May 2024, the Athlete and the ICF returned duly signed copies of the Order of Procedure to the CAS Court Office.
32. On 21 May 2024, the Athlete requested the Panel to order the ICF to make Mr. Hans-Peter Weiss and Ms. Sue Natoli (judges at the Competition) available for the hearing, to which the Respondent opposed on 22 May 2024.
33. On 22 May 2024, the Parties were informed that the Appellant's request to have Mr. Weiss and Ms. Natoli attending the hearing was dismissed, and that the reasons for such decision would be explained in this award.
34. On 23 July 2024, a hearing was held by videoconference in these proceedings. The Panel, Ms. Andrea Sherpa-Zimmermann, CAS counsel and the following persons attended the hearing:
 - For the Appellant:
 - Mr. Thomas Koechlin - Appellant
 - Mr. Emmanuel Emery – Counsel
 - Mr. Ralph Rüdisüli – Witness
 - Mr. Pierre Labarelle – Witness
 - For the Respondent:
 - Mr. Ivan Henzer – Counsel
 - Mr. Richard Pettit – ICF Secretary General
 - Mr. Lluís Rabaneda – ICF Vice-president
35. After the Parties' opening statements, the witnesses were examined, the Parties made their respective closing statements, a turn for rebuttal was also granted to them and the Athlete was heard.
36. At the outset of the hearing, the Parties confirmed that they had no objections with regard to the constitution and composition of the Panel. The Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

IV. THE PARTIES' POSITIONS

37. The following outline is a summary of the Parties' arguments and submissions which the Panel considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions, and documentary evidence were all taken into consideration.

A. The Appellant

38. The Athlete's submissions, in essence, may be summarized as follows:

- The Athlete was the victim of a refereeing error for which he was given a two-second penalty at the Competition. Both the video footage and slow-motion images of the Competition clearly show that the Athlete did not touch gate 3.
- According to Article 11.1.9 of the Competition Rules, "*Following the investigation of the enquiry the decision of the Chief Judge becomes a matter of fact and cannot be protested further.*" However, (i) the decision of the judges was arbitrary and thus can be further revised by the CAS and (ii) there is precedent allowing to deviate from such article: in 2006, at the world championships in Prague, a touch penalty was awarded to an Italian athlete; this decision enabled another athlete to become the world champion several months later, following numerous administrative and legal procedures; after various appeals, notably by the French Canoe Kayak Federation, the ICF convened to correct this arbitral error.
- According to Article 10.13 of the Competition Rules, "*At all times, the benefit of any doubt must be given to the athlete*". Failing to attribute doubt in favor of the Athlete in this case would constitute a gross violation of the sporting rules and constitutional principles.
- During the World Championships, a Czech competitor was given the exact same two-second penalty at gate 3 by the same judge. However, this penalty was withdrawn after his team protested. Upon reviewing the images, it is clear that neither the Athlete nor the Czech competitor touched the gate and were treated differently. This situation provides some insight into the subjectivity of the decisions made and, more importantly, the failure to uphold the principles of equal treatment and the benefit of the doubt for the athlete.
- The cancellation of the penalty would elevate the Athlete to 17th place in the rankings and enable him to secure an Olympic quota for Switzerland.
- On a subsidiary basis, in accordance with Qualification System-Games of the XXXII Olympiad-Paris 2024 and the Competition Rules it shall be concluded in any event that the Athlete obtained the 12th Olympic quota for Switzerland as the tie with his Spanish opponent Mr. Luis Fernandez shall be resolved in the Athlete's favour.

39. On this basis, the Athlete makes the following requests for relief:

"I. A TITRE PRINCIPAL

ANNULER la pénalité de 2 secondes infligée à Thomas Koechlin lors des Championnats du Monde ;

JUGER que l'annulation de cette pénalité entraîne son classement à la 17^e place des Championnats du Monde;

JUGER que le classement à la 17^e place de Thomas Koechlin suite à la demi-finale des Championnats du Monde entraîne l'obtention du quota olympique pour la Suisse.

II. A TITRE SUBSIDIAIRE

JUGER que selon l'article 10.18.2 des ICF Canoe Slalom Rules, en cas d'égalité en phase de demi-finale, qui est une égalité qui ne peut pas être résolue (« tie that cannot be solved ») par l'application de l'article 10.18.1, car, par définition, il n'y a qu'un seul run, le départage se fait selon le classement ICF.

JUGER que :

- Le classement ICF de Thomas Koechlin est 23^e.
- Le classement ICF du concurrent espagnol Luis Fernandez est 34^e.

JUGER que Thomas Koechlin devance Luis Fernandez et termine à la 20^e place des Championnats du Monde.

JUGER que, en application de la règle D.1.3.3 Qualification system – Games of the XXXIII Olympiad – Paris 2024, selon laquelle « The highest placed eligible athlete will obtain for their NOC an athlete quota place », Thomas Koechlin obtient pour la Suisse, la 12^e place de quota pour les Jeux Olympiques de Paris 2024.

III. A TITRE PLUS SUBSIDIAIRE

RENOYER la cause auprès du Comité exécutif de l'ICF ;

ORDONNER au Comité exécutif de l'ICF la désignation d'un Tribunal arbitral ICF pour décider de la cause dans les plus brefs délais ;

EN TOUT ETAT DE CAUSE

CONDAMNER l'ICF aux frais et dépens de la procédure devant le TAS.”

B. The Respondent

40. The ICF's submissions, in essence, may be summarized as follows:

- The appeal shall be inadmissible as it was filed late. The Appellant's main request for relief is to obtain a ruling annulling the 2-second penalty imposed on him in the Competition, which took place in September 2023. The appeal before the CAS has been filed more than 21 days after the Competition and shall be dismissed as it is out of time.

- The Appellant has no right to obtain a better competitive ranking through a CAS decision. The penalty imposed on the Appellant was reviewed by the Chief Judge in accordance with the Competition Rules. The Chief Judge confirmed the penalty imposed by the judges. Therefore, pursuant to article 7.5.4 in conjunction with article 11.3.4 of the Competition Rules, the penalty became a “*matter of fact*” and cannot not be further protested. No enquiry or appeal was ever lodged against such decision.
- The principle of respecting field of play decisions is part of the *lex sportiva* and has been confirmed on a constant basis by the CAS jurisprudence. Such jurisprudence has established that a field of play decision made by judges can only be subsequently challenged if there is evidence of bad faith or arbitrariness. In the case at hand, there is no submission that there was bad faith or arbitrariness in the review of the Chief Judge. The Chief Judge’s decision was fully compliant with the applicable rules.
- The entry of athletes in the Olympic Games is the exclusive responsibility of the National Olympic Committees (“NOCs”), as reflected in Rule 27.7.2 of the Olympic Charter. The Appellant has no support from the Swiss Olympic Association in this procedure, as it decided to withdraw from the appeal. Without the support of his NOC, the Appellant’s attempt to claim a quota is obviously ill-founded. The Appellant has no individual right to be entered in the 2024 Olympic Games.
- By claiming a quota for participating in the 2024 Olympic Games, the Appellant is intending that a NOC is deprived to enter another athlete since the quota is limited to 17 athletes in the Men’s Canoe single. However, the Appellant filed his appeal solely against the ICF, without naming as co-respondent the NOC which may lose its quota in the event that a quota be attributed to the Swiss Olympic Association. Since the NOC which may be negatively affected by a decision to reallocate a quota in favour of Swiss Olympic is not a party in these proceedings, the Appellant’s prayers for relief shall be dismissed.

41. On this basis, the ICF makes the following requests for relief:

“I. The Appeal filed by Thomas Koechlin on 5 March 2024 is inadmissible and, in any event, dismissed.

II. Thomas Koechlin shall bear all the arbitration costs.

III. Thomas Koechlin is ordered to compensate the ICF for its legal costs and other costs incurred in this arbitration, in an amount to be determined at the end of the hearing or of the instruction phase.”

V. JURISDICTION

42. The Appellant grounds the jurisdiction of CAS in article 44 of the ICF Statutes. The Respondent did not contest the CAS jurisdiction and expressly indicated it its Answer

that it “*accepts that this dispute be adjudicated by CAS for the sole purpose of obtaining a final decision in this matter prior to the Paris Olympic Games*”.

43. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.
44. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

45. The Respondent has claimed that the appeal is inadmissible because it was filed late. It argues that the Appellant’s main request for relief is to obtain a ruling annulling the 2-second penalty imposed on him during the World Championships held in September 2023. Therefore, assuming *arguendo* that the Appellant was entitled to challenge the results of the Competition, he should have lodged an appeal within the 21-day time-limit from the date of the Competition, which he failed to do.
46. The Panel does not share this view of the Respondent.
47. In these proceedings, the Panel notes that the Athlete is not appealing the decision of the Chief Judge that confirmed the two-second penalty imposed to him at the Competition, but a decision of the ICF Executive Committee issued on 14 February 2024 which *inter alia*, dismisses the Athlete’s requests for (i) submitting his case to an ICF Court of Arbitration and (ii) allocating the 12th Olympic quota to Switzerland based on how the tie between the Athlete and his Spanish opponent Mr. Luis Fernández is to be resolved. Therefore, the Panel considers that it is this decision (the Appealed Decision) and its date of issuance which must be taken as reference to determine whether the appeal was timely filed or not *in casu*.
48. The Panel refers to the ICF Statutes which do not specify a time limit to lodge an appeal against decisions made by the federation, so the Panel decides that Article R49 of the CAS Code and the 21-day time limit mentioned therein is applicable.
49. As such, the Appealed Decision is dated 14 February 2024. The Statement of Appeal was lodged on 5 March 2024, *i.e.* within the statutory time limit of 21 days set forth in Article R49 of the CAS Code. Therefore, the appeal is considered timely filed by the Panel.
50. Furthermore, the Panel notes that the Statement of Appeal, which also served as the Appeal Brief, complied with all the requirements of Articles R48 and R51 of the CAS Code.
51. It follows that the appeal is admissible.

VII. APPLICABLE LAW

52. Article R58 of the CAS Code provides the following:

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

53. In his submissions, the Appellant bases his case on the ICF rules and regulations, while the Respondent expressly mentioned in its Answer that the dispute shall be governed by the ICF rules and regulations (in particular, the Competition Rules) and that Swiss Law shall also apply.

54. Based on the foregoing, the Panel will decide this dispute in accordance with the ICF rules and regulations (both in their condition of applicable regulations and rules of law chosen by the Parties) and, as the ICF is headquartered in Switzerland, Swiss Law on a subsidiary basis (where the case may be and if necessary).

VIII. MERITS

55. As a preliminary issue, and as mentioned above, the Appellant’s request to have Mr. Weiss and Ms. Natoli attending the hearing was dismissed, and reasons for such decision were to be explained in this Award. In essence, the Panel took into account in its decision that (i) article R44.2 of the Code stipulates that each party is responsible for the availability of the witnesses it intends to call, (ii) even if it is true that under article R44.3 of the Code, the Panel can order the examination of witnesses if deems it appropriate, the testimony of Mr. Weiss and Ms. Natoli was not considered relevant vis-à-vis the legal issues at stake and in any event (iii) the Appellant’s request was made on a very short notice (only 2 days before the hearing) when it could have been made (and procedural good faith would have advised to make it) with much more anticipation.

56. As to the merits, in light of the Parties’ submissions, the dispute to be decided by the Panel can be briefly summarized as follows:

- The Appellant claims on a principal basis that the 2-second penalty imposed on him in the Competition shall be annulled, which would entail that (i) he became qualified in the 17th place in such Competition and (ii) Switzerland would obtain quota for the 2024 Olympic Games; on a first subsidiary basis, the Athlete requests that the tie in the 20th position obtained by him and its Spanish opponent Mr. Luis Fernández *ex aequo* in the Competition shall be resolved in his favour, this implying that the 12th Olympic quota shall be allocated to Switzerland; and on a second subsidiary claim, he claims that this case is re-sent to the ICF Executive Committee, ordering it to appoint an arbitral tribunal to decide the case.

- The Respondent essentially holds that the results of the Competition are final and cannot be reviewed based on the doctrine of field of play, that the Appellant has no standing to claim a quota for the 2024 Olympic Games and that the Appellant cannot deprive a NOC from an Olympic quota as he filed his appeal against the ICF only, without naming the relevant NOC as co-respondent.
57. The Panel firstly points out that the Appealed Decision resolves a request made by the Athlete to the ICF Executive Committee to appoint an ICF Court of Arbitration to decide on some of the claims that he is submitting to the CAS in these proceedings.
58. In the letter submitted to the ICF Executive Committee on 30 January 2024 that gave rise to the Appealed Decision, the Panel notes that the Athlete, as a preliminary matter, requested the ICF Executive Committee “*to appoint an ICF Court of Arbitration within fifteen (15) days upon receipt of this request*”. Following this preliminary request, the Athlete claimed that “*Having done so and after the Court of Arbitration procedures, the Court of Arbitration is requested to*” decide on some of the issues he is submitting to the resolution of this CAS Panel.
59. In line with such requests from the Athlete, the ICF Executive Committee resolved in the Appealed Decision that:
- The request for appointment of an ICF Court of Arbitration was to be dismissed. The Panel quotes below some part of the Appealed Decision in such respect:

“I hereby wish to provide the ICF's official response to your request of the 30 January for the ICF Executive Committee to appoint the ICF Court of Arbitration. [...]

In the light of the above, request for the appointment of the ICF Arbitration Panel is irrelevant. [...]

I hope that our answers to all your questions provide an adequate explanation and shed light on the key legal issues which prevent the ICF Arbitration Tribunal from being established in this case.”

The Panel notes that the reasoning for dismissing such Athlete’s request is to be found in page 2 of the Appealed Decision, in the following terms:

“According to the ICF Competition Rules the results of the ICF Canoe Slalom World Championships in London from the 19 September – 24 September 2023 are final.

There has been an enquiry and a review by the Chief Judge according to Article 11.1 of the ICF Slalom Competition Rules.

Following the investigation of the enquiry the decision of the Chief Judge became a matter of fact and couldn’t be protested further. (Article 11.1.9)

These facts were also described and admitted by the Applicant in its submission. The rules are unambiguous in this case. Beyond the aforementioned appeal possibility (which was provided, used and decided), there is simply no procedural rule that allows further challenging of the results of the competition.

Paragraph 44 of the Statutes also confirms the finality of the competition results, as it clearly states that an ICF Arbitration Panel can only be appointed in the case of a dispute that is not about the ICF competitions where the ICF Competition Rules apply.

In the light of the above, request for the appointment of the ICF Arbitration Panel is irrelevant.”

- The first alternative request, which is similar to the first subsidiary request made by the Athlete in this appeal, was dismissed, essentially because in the ICF Executive Committee’s view, the Athlete had no legal standing to claim an Olympic quota reallocation for his NOC.
 - The second alternative request, which has not been raised in this appeal, was also rejected.
60. Even if some doubts could arise in terms of CAS scope of review (as what the Appellant is submitting to the CAS Panel is to directly decide on the merits of his case, while what he submitted to the ICF Executive Board is that an ICF Court of Arbitration was appointed to decide on the merits of his case as presented in his letter of 30 January 2024), the Panel will deal with the Appellant’s requests for relief in this appeal for three reasons: (i) the rationale and content of the claims made by the Appellant in this CAS appeal are quite similar to the ones the Appellant wanted to be decided by an ICF Court of Arbitration, (ii) the Appealed Decision did not simply dismiss the Athlete’s request to appoint an ICF Court of Arbitration to resolve his claim, but also entered into the merits of the claims made by the Athlete in his letter of 30 January 2024, and (iii) the Respondent did not raise in its Answer any issue on the CAS scope of review and directly filed allegations on each of the petitions made by the Appellant in his Statement of Claim and Appeal Brief.
61. With regard to the main petition made by the Appellant (annulment of the 2-second penalty at the Competition and ensuing consequences), the Panel firstly refers to the following articles of the Competition Rules:
- Article 11.1, sections 7 to 9:

“11.1.7 - An enquiry must be submitted within five (5) minutes of the posting of the athlete’s checklist.

11.1.8 - The Chief Judge will review all the available information for the processing of the enquiry.

11.1.9 - Following the investigation of the enquiry the decision of the Chief Judge becomes a matter of fact and cannot be protested further.”

- Article 11.3.4:

“Matters of fact cannot be contested by an appeal to the Jury (see article 7.5.4.)”.

- Articles 7.5.3 and 7.5.4, in the pertinent part:

“7.5.3 – The Chief Judge is the final arbiter on all judging matters. [...]

7.5.4 – After the Chief Judge has ruled on an enquiry concerning penalties the result then becomes a matter of fact and therefore cannot be enquired/protested further”.

62. The Panel notes that it is uncontested in this appeal that (i) in the semi-finals of the Competition, the Athlete received from the Competition judges a two-second penalty for touching a pole in gate number 3, (ii) following an enquiry filed by SwissCanoe, and after a video review of the disputed gate passage, the Competition’s Chief Judge confirmed the aforementioned two-second penalty, and (iii) that no appeal was filed against this decision of the Chief Judge.
63. Bearing the aforementioned in mind, the Panel can only conclude that the revision of such decision is not possible at this stage by virtue of said provisions of the Competition Rules and of the CAS jurisprudence that has consistently affirmed that the CAS does not review field of play decisions, unless they have been taken in bad faith or with arbitrariness.
64. The Panel refers in this respect *ad exemplum* to the award CAS OG 00/013, which stated that “CAS arbitrators do not review the determinations made on the playing field by judges, referees, umpires, or other officials who are charged with applying what is sometimes called “rules of the game” (one exception among others would be if such rules have been applied in bad faith, e.g. as a consequence of corruption)”, or to the award of the case CAS 2021/A/8119, which comprehensively summarizes such doctrine of field of play in the following terms:

“62. [...] The “field of play” doctrine is well established in the CAS jurisprudence.

63. The characteristic features of the doctrine the “field of play” as stated in the CAS jurisprudence are set out in the in the following passages:

“In short Courts may interfere only if an official’s “field of play” decision is tainted by fraud or arbitrariness or corruption; otherwise, although a Court may have jurisdiction it will abstain as a matter of policy from exercising it” (CAS 2004/A/704).

and

“The rationale for the “field of play” doctrine is self-evident. CAS Arbitrators are not sufficiently trained in the rules of any or all sports and do not have the advantage to

observe the events. It would be unfair to a decisionmaker to interfere with decisions made by match officials who are the technical expert in these circumstances” (CAS OG 16/28).

and

“...it has been established that CAS does not review “field of play” decisions made on the playing field by judges, referees, umpires and other officials, who are responsible for applying the rules of a particular game, an exception is nevertheless possible if such rules have been applied in bad faith...” (CAS 2001/A/354 and CAS 2001/A/355).

64. *Further, as has also been determined under CAS jurisprudence matters “relating to” the “field of play” are also not properly the subject of review by CAS:*

“... not only is the decision not open to review on its merits, but also that the procedural aspects that led thereto cannot be revised” (CAS 2008/A/1641).

65. *In the above decision CAS 2008/A/1641, the sole arbitrator gave consideration to what might be a “procedural aspect” (at 33).*

“The rules governing the conduct of a sport are not constituted only by those defining directly technical movements or actions by the competitors (whose application cannot be review under the “field of play” decision doctrine), but also by those concerning, for instance, technical disqualification. Among those rules are therefore also those defining, from a procedural point of view, how a disqualification is to be announced and what are the remedies available in the federative system to challenge it. Indeed, in the evaluation of the conduct of an event, the Jury of Appeal (or the Referee) has to evaluate not only whether an athlete actually remained within his/her lane, but also whether a protest has been properly (i.e. timely and by the subject empowered) filed. Both evaluations – combined together – make up the decision of the “field of play” officer as to the regularity of the game and as to its results”.

66. *In CAS 2017/A/5373, the CAS further held the following at 50(d)):*

“These principles preclude the appellate review of not only the merits of a “field of play” decision but also the procedural aspect leading to it ...”.

67. *There is therefore clear authority that matters “relating to” the “field of play” fall within the same doctrine and are, therefore, not properly the subject of review by CAS”.*

65. The Panel considers that the decision of imposing the 2-second penalty to the Athlete in the Competition is a field of play decision, a finding that is not distorted, as the Appellant submitted at the hearing, by the fact that the decision was taken after the Athlete had crossed the finish line. In fact, the Panel notes that such a contention was contradicted at the hearing by the witness Mr. Rüdisüli, who expressly admitted that no protest was filed against the decision of the Chief Judge because such decision became a matter of

fact and SwissCanoe could not go further. In the same line, Mr. Labarelle stated at the hearing that no protest was filed against the Chief Judge decision as it would not be admissible, thus recognizing the “matter of fact” nature of the decision.

66. The videos of the gate passage presented by the Appellant as evidence of the judging mistake are thus irrelevant because, even assuming *arguendo* that the competition judges had made a clear mistake, a CAS panel would not be entitled to correct any such mistake: “*An error identified with the benefit of hindsight, whether admitted or not, cannot be a ground for reversing a result of a competition. Each sport may have within it a mechanism for utilising modern technology to ensure a correct decision is made in the first place [...] or for immediately subjecting a controversial decision to a process of review [...] but the solution for error, either way, lies within the framework of the sport’s own rules; it does not licence judicial or arbitral interference thereafter*” (CAS 2004/A/704 at para. 25). In this respect, as mentioned, the ICF Competition Rules provide that “[a]fter the Chief Judge has ruled on an enquiry concerning penalties the result then becomes a matter of fact and therefore cannot be enquired/protested further” (article 7.5.4) and that “[m]atters of fact cannot be contested by an appeal to the Jury” (article 11.3.4). The Panel is of the view that these ICF rules clearly provide that, after a competition is complete and a Chief Judge’s review is over, any identified judging error is immaterial to the result of the competition, as only an error identified *during* the competition and successfully challenged before the Chief Judge can affect such a result, with no further possibility of review.
67. As to the potential existence of bad faith, corruption or arbitrariness in the decision-making process leading to the 2-second penalty imposed on the Athlete by the judges in the Competition, the Panel does not find that this potential exception to the field of play doctrine is to be applied to this case as the Athlete failed to prove that such decision was taken in bad faith, arbitrarily or in a corrupt manner. What is more, the Panel notes that the Appellant’s witnesses Mr. Rüdisüli and Mr. Labarelle expressly acknowledged at the hearing that in their view, the Competition judges did not act in bad faith or corruptly when making their decision.
68. As to the Appellant’s contention of “arbitrariness” in the field-of-play decision because the Chief Judge allegedly violated article 10.13 of the Competition Rules (providing that “[a]t all times, the benefit of any doubt must be given to the athlete”), the Panel rejects this contention. Indeed (even leaving aside the fact that the evidence on file does not prove that the Chief Judge had doubts when the field-of-play decision was taken), the Panel is of the view that it is not sufficient that a competition judge violates some competition rules to find arbitrariness. A finding of arbitrariness, as an exception to the field-of-play doctrine, must imply a shockingly outrageous and outlandish behaviour by a competition judge or referee, something that is way more extraordinary than a mere misapplication of the rules of a given sport or competition.
69. In any event, for the sake of completeness and in light of some related allegations made by the Appellant in his written submissions and at the hearing, the Panel finds that:

- There has not been (i) any infringement of the Competition Rules neither in the decisions made by the Competition judges and the Chief Judge nor in the Appealed Decision or (ii) inequality of treatment of the Athlete vis-à-vis other athletes in the Competition. The Athlete failed to duly substantiate and prove such allegations.
 - The Athlete also failed to convincingly explain to which extent the precedent of 2006 in the world championship of Prague invoked in his Statement of Appeal could apply to or have decisive influence in the present case, especially bearing in mind that he did not deny the Respondent's contention that the regulations applicable at that time were different from those applicable to the Competition.
 - The principle of the benefit of the doubt in favour of the athlete enshrined in article 10.13 of the Competition Rules does not play any role in this case, as the Competition results are final and cannot be reviewed in this instance as explained above.
70. Therefore, and for the reasons set out above, the Panel cannot review the decision of imposing the 2-second penalty to the Athlete in the Competition. Consequently, the main request of the Appellant shall be dismissed.
71. With regard to the Appellant's first subsidiary request, the Panel firstly points out that this request (in summary, that the application of the rules to resolve the tie between the Athlete and his Spanish opponent Mr. Luis Fernández in the Competition entail that the Appellant has to obtain for Switzerland the 12th quota place for the 2024 Olympic Games) directly affect a third party that has not been sued by the Appellant in these proceedings.
72. This argument was raised by the Respondent both in its Answer to the Appeal Brief and at the hearing: the Respondent argued that the Appellant decided to file this appeal solely against the ICF, without naming the NOC which may lose its quota in case that a quota be attributed to Swiss Olympics, and that since the NOC which may be negatively affected by a decision to reallocate a quota is not a party to these proceedings, this Appellant's request for relief is to be dismissed.
73. The Panel shall refer in this respect to the well-established CAS jurisprudence that has concluded that if the prayers for relief of an appeal are to affect to a party that has not been sued in the proceedings, the Panel cannot entertain such prayers for relief and shall dismiss them. *Inter alia*, the Panel refers to the awards CAS 2004/A/594, CAS 2019/A/6635 and CAS 2021/A/8140, the latest of which in the pertinent part reads as follows (emphasis added):
- "51. The Sole Arbitrator, however, recalls that CAS case law and more particularly CAS 2013/A/3228 holds that "If the prayers for relief, whatever the decision of the CAS panel may be, will affect the rights of a third party that has not been named and included as respondent in the proceedings before the CAS, there is no scope of review for the CAS panel and the appeal must be dismissed". The Sole Arbitrator fully*

adheres to this jurisprudence and does not see any reason to deviate from this principle, confirmed by several CAS panels” (emphasis added).

74. The Panel notes that, at the hearing, the Appellant failed to duly substantiate why this CAS jurisprudence should not be applied to this case and to what extent it is possible by the Panel to uphold the first subsidiary request without having the other affected NOC in the proceedings defending its case.
75. Therefore, the Panel concludes that this first subsidiary request is to be dismissed, being it unnecessary to enter into other related considerations around this first subsidiary request, such as the Athlete’s alleged lack of standing to sue – as submitted by the Respondent – or the possibility or not of altering the Olympic quota allocation at this stage.
76. Finally, concerning the Appellant’s second subsidiary request (the case being re-sent to the ICF Executive Committee so that it appoints an ICF Court of Arbitration to decide the dispute), the Panel refers to article 44 para.1 of the ICF Statutes, which reads as follows (emphasis added):

“In the case of a dispute, other than at ICF competitions where the ICF Competition Rules apply, a Court of Arbitration of the ICF will be appointed, consisting of three (3) Arbitrators.”

77. The Panel then notes that the Appealed Decision made reference to such provision to ground the rejection of the Athlete’s claim for appointment of an ICF Court of Arbitration, in the following terms:

“Paragraph 44 of the Statutes also confirms the finality of the competition results, as it clearly states that an ICF Arbitration Panel can only be appointed in the case of a dispute that is not about the ICF competitions where the ICF Competition Rules apply.

In the light of the above, request for the appointment of the ICF Arbitration Panel is irrelevant.”

78. The Panel concurs with the ICF Executive Committee’s view that the ICF Court of Arbitration would not be empowered to adjudicate the Athlete’s dispute, as such dispute arises from an ICF Competition (the World Championships) where the Competition Rules applied; indeed, those rules have been repeatedly invoked by the Appellant to ground his claim. As such, the Athlete failed to provide any convincing argument that would allow the Panel to deviate from such conclusion; therefore, sending the case back to the ICF Executive Committee for the appointment of an ICF Court of Arbitration would be clearly incorrect and, thus, ineffective and of no avail to the Appellant.
79. Therefore, the Panel decides that the Appellant’s second subsidiary request is also dismissed.

80. In light of the above, the Panel decides that the appeal filed by the Athlete is entirely dismissed and the Appealed Decision is confirmed.

IX. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 March 2024 by Mr. Thomas Koechlin against the decision issued by the International Canoe Federation on 14 February 2024 is admissible.
2. The appeal filed on 5 March 2024 by Mr. Thomas Koechlin against the decision issued by the International Canoe Federation on 14 February 2024 is dismissed.
3. The decision issued by the International Canoe Federation on 14 February 2024 is confirmed.
4. (...).
5. (...).
6. All other and further motions or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 27 February 2025

Operative part of the Award notified on 27 June 2024

COURT OF ARBITRATION FOR SPORT

Jordi López Batet
President of the Panel

Benoît Pasquier
Arbitrator

Massimo Coccia
Arbitrator