

## DEVELOPMENTS ON RULE OF LAW FOR OLYMPIC GAMES ELIGIBILITY GOVERNANCE

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**Abstract:** *Due to the ambiguity and fuzziness of the qualification rules and regulations formulated by the international sports federations, many problems have been raised in the Olympic selection stages, such as conflicts in the division of authority among sports organizations, ill-defined allocation of competition quotas and barriers on information disclosure and communication mechanism, which need to be solved urgently. The Qualification System Principles (QSP) are the official documents approved by the International Olympic Committee before each Olympic Games, which are designed to guide the qualification system of various sports events. Using the text analysis method to study the content of the QSP documents, it can be found that they have effectively responded to the problems in practice by delineating the scope of right of sports organizations, standardizing the type of quota allocation and improving the information transmission mechanism. However, the criteria for the qualification system are a constantly developing and improving rule system. It also needs to continue its efforts in supervising the selection of domestic sports organizations, balancing the dual-track system of qualification, and building channels for consultation and collaboration on the qualification management, in order to truly realize the principles and purposes of the Olympic Charter.*

**Keywords:** *Olympic Games; Qualification Management; Qualification system Principles; Olympic Charter*

### 1. Introduction

With the increasing commercialization of sport, qualifying for the Olympic Games has become a lifelong professional dream for all athletes, with huge financial benefits and commercial reputation inspiring athletes to compete for a limited number of "tickets" to the Olympic Games. In accordance with spirits of Olympic Charter, International Olympic Committee (IOC) and International Federations (IFs) establish rules and regulations on eligibility and qualification criteria at the international level, while National Olympic Committees (NOCs) and National Federations (NFs) further refine the specific requirements to select talented athletes to participate games. Thereafter, Olympics games athletes should first be nominated by the NFs, confirmed by the NOCs to represent their country, and reported to the IFs for approval before their eligibility is finalized by IOC. The Olympic selection presents a dual-track system characterized by

multiple layers of selection subjects (various sports organizations) and two-tier selection rules. Based on guaranteeing the relatively independent selection rights of international and domestic sports organizations, this system also brings problems such as conflict in the division of competence among sports organizations, confusion on allocation of competition quotas and barriers on information disclosure and communication mechanism.

In this context, IOC governs Olympic Games Eligibility issues through the Qualification system Principles (QSP), as the normative rules applicable to all sports, plays an important role in regulating discretion of international or national sports organizations under the dual-track system and guaranteeing the stable operation for the selection of Olympic Games.

## **2. The Realistic Dilemma of Eligibility Governance for the Olympic Games**

In the jurisprudence of Court of Arbitration for Sport (CAS), using ELIGIBILITY as the key word, there were 41 disputes between 2016 and 2020, and the number increased significantly during the period of Olympic Games<sup>1</sup>. Among them, 38 cases were disputes caused by the interpretation and application of eligibility or qualification rules, the percentage is up to 93 %. Disputes typically arise when unqualified or unselected athletes seek to overturned selection or nomination decisions by the NFs, NOCs, IFs or IOCs due to violating the respective rules. Reviews on awards reveals that eligibility disputes are rooted in failing to interpret and apply related rules, resulting in the following three categories of issues.

### **2.1 Lack of Clarity in the Division of Competence among Sports Organizations**

The Olympic Charter (Charter) is a broad set of guidelines that does not specify the exact roles and responsibilities of different sports organizations. This has caused confusion and disagreements between different organizations when it comes to working together to select athletes for the Olympic Games. In other words, the Olympic Charter does not say exactly which sports organizations are responsible for which aspects of the Olympic selection process. This has led to different organizations making different decisions, which has caused

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1. QS can be narrowly and broadly construed. Narrowly construed QS mainly refer to the physical fitness and performance requirements set by sports organizations that athletes should meet in order to participate; broadly construed QS also include requirements for disciplinary penalties for athletes, doping violations, gender or nationality. As the provisions in the QSP are mostly about the requirements set by sports organizations, the rules and disputes examined in this paper are limited to the scope under the narrow interpretation. Data source: <https://www.tas-cas.org/en/jurisprudence/archive.html,2023-2-1>.

some problems. For example, in the case of *Yulia Efimova v Russian Olympic Committee, International Olympic Committee & Fédération Internationale de Natation (FINA)*,<sup>2</sup> as Russia was proved to have a systematic doping problem, the IOC Executive Board, in principle, applied collective responsibility to prohibit Russian athletes from participating in the Olympic Games in Rio, but permitted athletes who met certain conditions to participate as an exception. However, FINA has set stricter conditions in implementing this requirement, that is, Russian athletes could not compete as long as they had received a doping sanction in the past. Yulia Efimova appealed to the CAS, and the panel found that this provision violated the principle of *non bis in idem*. It can be seen that the IFs, when implementing the rules set by the IOC, have a poor understanding of the IOC exceptions and overstep their authority. For another example, in *Rainer Schuettler v International Tennis Federation (ITF)*,<sup>3</sup> German Olympic Committee (GOC), to which Rainer Schuettler belonged, considered that although he was ranked at the back of the international rankings, his performance in this season was outstanding and he met the qualification criteria, so GOC nominated him to participate in the Olympic Games. However, ITF argued that GOC should have nominated athletes ranked higher in the order of their international rankings. The panel noted that NOCs had discretionary power over the eligible athletes and could decide on the athletes to represent their countries at the Olympic Games, so ITF had no power to intervene, and that Rainer Schuettler was eligible to participate in the Olympic Games.

Conflicts arise between IFs and NOCs in terms of eligibility rules due to the ambiguity of rules infringing on athletes' rights and interests as a result.<sup>4</sup> Even if the eligibility is regained through CAS awarded, it takes a lot of extra time and efforts to prepare for Games, no matter for athletes or their NOCs. Obviously, On the one hand, different sports organizations that are involved in the Olympic selection process have overlapping competence. This can lead to conflict and confusion, as each organization may try to assert its own authority. Therefore, the division of competence among three pillars, namely IOC, IFs and NOCs, has been unclear for a long time. On the other hand, when there are disputes, the overlap leaves a room for sports organizations to “pass the buck” to each other, which make it difficult to coordinate the selection process and ensure that it is fair and transparent.

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2. *Yulia Efimova v Russian Olympic Committee (ROC), International Olympic Committee (IOC) & Fédération Internationale de Natation (FINA)*, (Award) (Court of Arbitration for Sport, Case No OG 16/004, 4 August 2016)

3. *Rainer Schuettler v International Tennis Federation (ITF)* (Award) (Court of Arbitration for Sport, Case No OG 08/003, 4 August 2008)

4. Qiao Yijuan (2012), “Connotation of Eligibility for Athletes”, in: *Journal of Wuhan Sports University*, Vol. 46: 09, pp. 30-35.

## 2.2 Lack of Certainty on Allocation of Competition Quotas

In the past, IFs have formulated fewer types of quota allocations in their eligibility rules, and in some sports, they have only provided for the allocation of quota places according to qualification events or international rankings. However, such a single allocation method cannot truly meet the requirements of the Olympic spirit of fair competition and will essentially aggravate the monopoly of a certain country for some sports in which it has an advantage. The Charter points out that universality is an important connotation of the Olympic Movement and calls for the full participation of all continents,<sup>5</sup> countries or regions in the Olympic Games, so that athletes of different origins, cultures, genders and regions can compete on the same stage. Based on this, many sports have encouraged countries to actively develop their sports industry by establishing special quota allocations to give some disadvantaged countries and continents additional participation quotas.

However, allocation of quotas is usually written in the rules, the interpretation and application leave some uncertainties for athletes or NOC who are eager to earn as many as quota to compete in the Games. Under such circumstances, NOCs, NFs or athletes can only understand the rules with the help of their past experience, and due to the different perspectives, it is easy to deviate from the understanding of the main body of the formulation and cause disputes. For example, in the case of the Australian Olympic Committee(AOC) v Fédération Internationale de Bobsleigh et de Tobogganing(FIBT),<sup>6</sup> the parties disagreed on the interpretation and application of the continental representation quota rules, and the dispute centered on the phrase of "maximum of one 2-man bob team or one 4-man bob team and one woman's bob team per continent".<sup>7</sup> The AOC argued that since men and women competed in separate divisions, the rule should also be interpreted as treating men's teams differently from women's teams, and that since Oceania had no countries competing in the women's division, Australian athletes were entitled to use the continental quota. On the other hand, the FIBT argued that continental representation does not differentiate between men and women, it only applies when a continent is not represented by any country. The unclear description for allocating the continental representation in this case led

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5. Article 3 of the Fundamental Principles of the Olympic Charter defines the "Olympic Movement" as "coordinated, organized, universal and sustained action by all individuals and entities inspired by the Olympic values, under the supreme authority of the International Olympic Committee".

6. Australian Olympic Committee v Fédération Internationale de Bobsleigh et de Tobogganing (FIBT) (Award) (Court of Arbitration for Sport, Case No OG 10/001, 9 February 2010)

7. Qiao Yijuan(2010), "Review of cases of arbitration for Vancouver Winter Olympics 2010", in: Journal of Physical Education, Vol. 17: 09, pp. 40-44.

to a dispute over the eligibility of the Australian women's bob team. While in the case of *Virgin Islands Olympic Committee v International Olympic Committee (IOC)*,<sup>8</sup> a female athlete from the Virgin Island met the minimum standards required for skeleton but failed to qualify for the 2018 Winter Olympics through the normal selection process. A dispute arose between the parties as it was not clear for the skeleton whether the Tripartite Commission invitation quota system would apply to provide the athlete with an additional quota. Differences in the requirements for the quota allocation in different sports can easily result in misunderstandings when the rules themselves are not clear, causing a serious obstacle to the participation of athletes.

### **2.3 Lack of Effectiveness on Information Disclosure and Communication Mechanism**

In the case of Olympic selection, many updates to participation information or amendments of rules do not provide a reliable and official channel, resulting in applying rules incorrectly and improperly. The reason is that the textual expression of selection rules and information is also characterized by the ambiguity of legal rules, which need to be interpreted or communicated under a specific context. If the interpretation and application of the rules are misunderstood due to different perspectives, and then inappropriate preparation strategies are adopted under their wrong understanding, athletes may still be unable to obtain the qualification even though they have put in a lot of effort, which is not worth the loss.

This was obviously evident in the case of *Japan Mountaineering & Sport Climbing Association v International Federation of Sport Climbing (IFSC)*.<sup>9</sup> Japanese Olympic Committee (JOC) once had doubts about the application of the host country quota rules when selecting athletes. So they sought explanations from the IFSC Head of Olympic Coordination and the Vice President of the IFSC and then changed their arrangements for olympic participants based on the response from these sports organization officials. However, when the IFSC was reviewing all eligible athletes of events, the JOC was suddenly informed that it could not use the host country quota in the event, and an athlete of event was ineligible for OG. The JOC appealed to CAS, while the panel found that the previous explanation of the sports organization officials on the allocation of the host country quota was incorrect and lack of authority. In fact, it did not constitute an organizational decision that can be reviewed by CAS. Finally, CAS could only

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8. *Virgin Islands Olympic Committee v International Olympic Committee (IOC)* (Award) (Court of Arbitration for Sport, Case No OG 18/001, 2 February 2018)

9. *Japan Mountaineering & Sport Climbing Association v International Federation of Sport Climbing (IFSC)* (Award) (Court of Arbitration for Sport, Case No 2019/A/6557&6663, 10 December 2020)

regretfully reject the party's request. Such eligibility disputes are not uncommon in arbitration practice.<sup>10</sup>

In the Tokyo 2020 Olympic Games, there was also a case of Kalashnikova, a Georgian tennis player, who was verbally informed in March 2021 by Officers of Georgia Tennis Federation (GTF) that she had been nominated to participate in the Olympic Games. In July 2021, Kalashnikova sent a private message to GTF via FACEBOOK again inquiring whether he had submitted his application form for registration as required and received a positive reply. However, when the final list was announced by the International Tennis Federation (ITF), Kalashnikova did not qualify because of they had not received her application from GTF. In its award, the panel stated that the first unwritten notification and the subsequent replies via a private social media account in the dispute were not official acts and did not have the effect of an official decision.<sup>11</sup>

It is not difficult to find that during the selection period of the Olympic Games, the lack of official interpretation and communication mechanisms between athletes and NOCs and NFs has resulted in athletes only being able to make a request to officials of sports organizations through informal methods. In this situation, even if a response is obtained, as seen in the case above, the personal response of such officials cannot guarantee the accuracy of the interpretation and application of the rules, nor can they be held responsible for the content of the response, and therefore the CAS is unable to confirm its validity.

### **3 Implementations of Eligibility Governance for the Olympic Games after Publication of QSP**

In the long-run Olympic development, selection of stronger, faster and diverse athletes to participate Games is the better aim to produce eligibility rules, by practicing values of Olympic Game based on the idea of fair play, excellence friendship, respect, equality, and peace. IOC Executive Board and the IFs endeavors to specify eligibility rules into QSP, published before 3-4 years of each OG. The QSP puts forward the basic requirements for substantial criteria and procedural aspects of the rules on the eligibility of athletes to be selected by the IFs, provides a framework template for relevant organizations for selecting athletes, which is of great significance as a guide. The QSP aims to select outstanding athletes to participate in the Olympic Games in a fair and impartial manner, to present the high-profile and high-level international events, and to enhance the competitiveness of the athletes and the spectators' enjoyment. As a guiding document for the rules on eligibility, the QSP will gradually solve

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10. Such as CAS 2018/A/5982, CAS OG 20/003 and so on.

11. Oksana Kalashnikova & Ekaterine Gorgodze v International Tennis Federation (ITF) (Award) (Court of Arbitration for Sport OG 20/005, 23 July 2021)



the above practical problems through the following three implementation plans, which will have a far-reaching impact on the exercise of power and regulation of sports organizations.

### **3.1 Clearance of Divisions on Sports Organizations' Competences**

Analysis on QSP texts for the last four years shows that the three pillars of Olympic Games, i.e., the IOCs, IFs and NOCs, are the main targets of the regulations. For example, the QSP of Tokyo 2020 Olympic Games (QSP 2020) contains 22 specific points, of which four relate to the powers and competences of the IOCs, accounting for about 18 %; seven to the NOCs, accounting for about 32 %, six to the IFs, accounting for about 27 %. Indirectly related to the IFs, there are 14 provisions on the eligibility system for each sport they have developed, accounting for about 63 %. The QSP specifies the division of competences between the various sports organizations through specific provisions, as follows:

#### *3.1.1 IOC: Authorities of approval, amendment and revocation*

According to the Olympic Charter, the IOC and its Executive Board have the authority to approve and review applications for participation by the NOCs, decide on the number of participants in the overall and individual events, and determine deadlines for the registration and acceptance of the allocated quotas, etc. In short, the IOC, through its powers of approval, modification and revocation, has an overall grasp of entry qualification matters and supervises the IFs and NOCs in the performance of their management functions.

At first, the right of approval is central to the IOC's authority to regulate qualification. "Matters of significance" must be approved by the IOC before they can be implemented,<sup>12</sup> echoing the "IF proposals requiring the approval of the IOC Executive Board" written in the Olympic Charter. Matters requiring approval by the IOC Executive Board include the validity of qualification system, amendments of criteria and numbers of events or participants. It is not beyond the IOC's absolute control over the Olympic Games in terms of eligibility, reaffirming the fundamental position of the IOC in the Olympic Movement.

Secondly, the right to amend means that when special circumstances such as force majeure or change of circumstances arise and it is necessary to amend matters relating to the qualifications for the Olympic Games, IOC shall be consulted, and the modifications shall be determined. This was particularly evident in the Olympic Games Tokyo 2020, which was postponed due to the COVID-19 pandemic, where IOC and its Executive Board made modifications to the qualification timeline, entry deadline, age requirement for participation, etc. For example,

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12. "Matters of significance" means changes to matters other than qualification event locations or dates. See Article 1 of the Change management and issue resolution section of the QSP 2024.

Article 22 of the QSP 2020 stipulates that "The IOC Executive Board reserves the power to approve any modification proposed by IFs to qualification system impacted by the COVID-19 pandemic and subsequent postponement of the Olympic Games Tokyo 2020, in order to safeguard the safety and interests of athletes". Both IOC and its Executive Board have considerable discretionary power to amend and change all kinds of matters concerning the Olympic Games.

Finally, the right of revocation is the IOC's most powerful sanctioning tool under qualification system. In cases where the IFs and other organizers of the qualifying events violate the principle of non-discrimination, fail to meet the QSP requirements or do not comply with the Olympic Charter, the IOC Executive Board has the power to revoke the Olympic Qualification events, that is, it will no longer be one of the events on which athletes get the eligibility. This is considered one of the most severe penalties for sports organizations, as it essentially removes the right to hold qualifying events from the sports organization and may invalidate the results achieved by participating athletes.

It is clear that the IOC has exclusive control over access to the Olympic Games.<sup>13</sup> Under the current selection mechanism, the IOC is at the top of the pyramid of Olympic sports management, with few organizations and rules other than the Olympic Charter to restrict its actions. However, in the case of *Australian Olympic Committee v Fédération Internationale de Bobsleigh et de Tobogganing (FIBT)*,<sup>14</sup> CAS panel, based on the requirement of "continental representation" under the principle of universality, recommended that IOC allocates additional places to the women's Bob Event of the AOC in order to resolve the dispute caused by the uncertainty of the qualification system, and finally get the execution of IOC. This shows that the QSP can make recommendations on misconduct by the IOC and its Executive Committee and indirectly restrain the power of IOC to avoid its monopoly in the Olympic Games.

### *3.1.2 IFs: Rules-making authority and Duty to inform.*

IFs are international organizations that manage one or several sports in the world and are familiar with the technical requirements, unique characteristics, and event settings of each sport. According to provisions of the Olympic Charter, IFs have the authority to set the qualification system for the Olympic Games, which actually confirms the absolute power of IFs in the arrangement of events and selection of athletes. On the contrary, the athletes, often find it difficult to get effective protection for their right to absorb information and equal opportunities of participation.

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13. Christoph Vedder(2023), "Olympic Law Today", in: *Southwestern Journal of International Law*, Vol. 28:02, pp. 768-809.

14. *Australian Olympic Committee v. Fédération Internationale de Bobsleigh et de Tobogganing (FIBT)* (Award) (Court of Arbitration for Sport, Case No OG 10/001, 9 February 2010)



From the previous QSP of Olympic Games, on the basis of the Olympic Charter, ensure the IFs a certain degree of independence and autonomy at the same time, emphasizing the obligation of IFs to inform in the selection mechanism. IFs should maintain open communication channels with sports organizations such as the NOCs and NFs when selecting athletes, explaining and updating informations in a timely manner, e.g., IFs should inform the NOCs and NFs for any changes in qualification requirements, the publication of eligibility lists, etc.<sup>15</sup> In addition, IFs are obliged to urge the full implementation of selection regulations and effectively guarantee that individual athletes are informed of the latest rules and adjust their training programmes accordingly.

### *3.1.3 NOCs: Right of Nomination or Non-nomination*

NOCs are the central body responsible for matters relating to the Olympic Games in each country and are the only legal sports organizations with the authority to represent the Olympic Movement in that country. Article 27.3 of the Olympic Charter provides that NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and is obliged to participate in the Games by sending athletes. Given the absolute influence of NOCs over selection and nomination of athletes, the QSP has determined that the NOCs making the final decision in the selection of athletes, which can be divided into the following two categories:

On the one hand, the right of nomination, that is, athletes can only be nominated by the NOCs to obtain a place in the Olympic Games. There are two general ways of allocating Olympic quotas: one is the "slot allocation", quotas are allocated to the NOCs of based on the performance of their athletes in specific events, then the NOCs nominate and decide on the who can represent their countries within those athletes in the Olympic Games. In this model, the athlete who is ultimately sent to the Olympic Games may not be the country's best performer or the athlete who has earned the quota place for his or her country. The other is "nominal qualification", where quota places are allocated directly to athletes on the basis of their performance in particular events, but in this case the athletes still need to be recognized by their NOCs in order to take part in the Olympic Games. In other words, even if an athlete has qualified for a quota place in a qualifying event to which the Nominal qualification system applies, the athlete will not be able to qualify if the NOC does not confirm the place.

On the other hand, the right of non-nomination, that is, NOCs could decide on their own whether or not to refuse to accept the allocated quotas, but the refusal cannot be revoked. Moreover, the right of non-nomination can be divided into "positive way" and "negative way". The latter refers to the right to select

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15. Article 3 of QSP 2020, Article 14 of QSP 2022, Article 1 of the Introduction section of QSP 2024, Article 14 of QSP 2026.

only a certain number of athletes to participate in a highly competitive sport due to quota restrictions, which often means rejecting another athlete; while the former refers to the right to strategically "give up" a quota in order to indirectly realize the country's Olympic selection strategy. For example, in the case of Japan Mountaineering & Sport Climbing Association v International Federation of Sport Climbing (IFSC),<sup>16</sup> the Japanese Olympic Committee (JOC) planned to refuse to confirm the allocation of place to its athletes through the "nomination system", and then to use the host country places on the ground that Japan doesn't have a quota available in that sport, so that they can select the athlete that they considered more suitable to represent Japan. Ostensibly, it may seem anti-intuitive for the NOCs to voluntarily decline quotas, this is in fact a strategic choice of different types of quotas in order to win the competition.

### **3.2 Distinction between All Types of Quota Allocations**

According to the slogan of the Olympic Games, "Faster, Higher, Stronger-Together", Olympic Games should not only ensure that each event is a duel of top athletes to enhance spectatorship, but also ensure universal and equal participation of all regions and countries in the world, hereby the allocation system has become a special tool—"regulator" for realizing the above objectives. The QSP requires that the qualification system for each sport include not only the general quota allocation, but also the special quota allocation. In this way, athletes in countries or continents with inadequate sports development could have additional opportunities to participate in the Olympic Games. Moreover, this model can also limit the number of participants from the dominant countries in certain sports to ensure the antagonism and fairness of the competition.

#### *3.2.1 General Quota Allocation*

At the international level, IOC regulates the number of athletes participating in each Olympic Games, setting out the number of participants required for each sport, which is further enforced through the qualification system set by the IFs. Typically, most participation places in the sport are given to specific countries or athletes in the initial quota allocation. In determining the allocation of places, IOC considers factors such as the host country's carrying capacity, the level of development of each sport and the balance between continents. The QSP 2020, QSP2022 and QSP2024 all require that, subject to the approval of the IOC Executive Board, IFs set a clear limit on the number of athletes that can take part in the Olympic Games from each country. The reason for this is that certain countries may have many talented athletes in a particular sport due to geography, histori-

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16. Japan Mountaineering & Sport Climbing Association v. International Federation of Sport Climbing (IFSC) (Award) (Court of Arbitration for Sport, Case No 2019/A/6557&6663, 10 December 2020)

cal tradition, or the development of sports industry, etc. If quotas are allocated solely since the rankings of qualifying events, this may result in a "monopoly" situation, which is not conducive to boosting the motivation of other countries to participate in the sport and may also hinder the flourishing development of the sport in the world. Accordingly, in order to comply with the IFs' limitations on the number of participants, the NOCs will make adjustments to their domestic selection documents, so as to maximize the benefits of national interest with a limited number of Olympic seats through systematic deployment.

At the domestic level, athletes who represent the country at the Olympic Games are determined by NOCs. The Olympic Games is a world-class sporting event in which the country is the basic unit of participation, and NOCs have absolute discretion over how the quotas are allocated within the country. Considering the huge difference between the economic and sports development of each country, it is difficult for the QSP to provide a uniform and specific selection model for the allocation of quotas and can only respect the allocation method within each country to the maximum extent possible on the basis that each country complies with the eligibility rules formulated by the IFs.

### 3.2.2 *Special quota allocation*

To promote the substantive fairness of the Olympic Games and to ensure the diversified participation of countries with different geographic regions and different levels of competitive development, the QSP also requires that the IFs should set up the following allocation methods for additional quotas in the light of the actual situation of the current Olympic Games.

The first is the Tripartite Commission Invitation Places System.<sup>17</sup> The "Tripartite" in this system refers to the IOC, the Association of Summer Olympic International Federations and the Association of National Olympic Committees, each of which send representatives to form committees representing different positions and based on their own priorities, to offer places to countries that do not qualify according to the normal selection criteria and process, but that meet the conditions for invitation under this system. The conditions for applying for a Tripartite Invitation are generally divided into two categories: *physical conditions*, which require the applicant country to have a small number of athletes—eg the Olympic Games Tokyo 2020 requires an average of less than eight participating athletes in the individual events—and to fulfil the minimum criteria of the IFs' various qualification system; *procedural conditions*, which require the applicant country to submit an application within a specified period of time to the IOC, for review by the Tripartite Commission and the IFs. The country that has been invited to take up a place must respond within the given time after receiving

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17. Starting with the QSP 2024, the system was renamed the universal places.

written notification from the IOC to confirm the use of the quota place. Starting with the QSP 2024, the system was renamed the universal places.

The second is the Continental Representation System. This system means that, in addition to the regular qualification pathway, IFs will, in accordance with the relevant rules, grant additional quota places to continents that have not yet obtained a place in the Games. This generally applies if, based on the results of the qualification events, no national athlete from a continent has won a place in the sport, then a reserved continental representation place will be granted; if there are national athletes from a continent who are eligible to take part in the Olympic Games, then the unused quota places will be reallocated in accordance with specific rules. Normally, the allocation of quota places under the continental representation system is in accordance to specific competition results only, regardless of gender. In the case of Trampoline event at the Paris 2024 Olympic Games, only if a continent fails to obtain a place through other rules can the Continental Championships be considered as part of the qualification events and the best athlete from that competition be awarded a qualification place. As to whether this is allocated to a women's or men's athlete, the percentage of her/his final score compared to the average score of the top 12 scores from athletes at the 2023 World Championships will be calculated, with the higher score earning a quota place for her/his NOC.<sup>18</sup> Unlike the Tripartite Commission, which jointly agrees on the number of places to be invited, the rules and procedures for the allocation of places in the Continental Representation System are determined by only one single IFs. Therefore, its independence and impartiality are often susceptible to questioning to a certain extent, which is easy to cause disputes.

The third is the Host Country Places System. This is a system whereby athletes from the country hosting the Games who do not qualify for a place through the qualifying event rankings are granted additional places on the basis of their status as a representative athlete of the host country as long as they meet the minimum standards. The Host Country place is specified directly by IFs in the qualification system and is usually set at one quota, allocated solely on the basis of competition results or rankings, without distinction as to gender. The QSP 2020, QSP 2024 and QSP 2026 all emphasize that IFs may specify the host country quota in the individual qualification system as required, and that the quota's setting is not mandatory. However, if the host country quota is not set, it needs to be clearly stated in the rules.

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18. International Gymnastics Federation, QS-Trampoline, Available at : <https://stillmed.olympics.com/media/Documents/Olympic-Games/Paris-2024/Paris2024-QS-Gymnastics-Trampoline.pdf>.

### 3.3 Establishment of Official Communication Channel

The importance of information communication is not only due to the polysemy and ambiguity of language and its context, but also to the complexity and variability of sports activities.<sup>19</sup> In practice, many qualification systems contain "gray areas" in terms of the order of qualifying events, the calculation of rankings or the objects of allocation. Different sports organizations adopt different interpretations of these ambiguities in accordance with the purpose of the rules and the practice of their application, leading to different results, which is very likely to lead to disputes. In this regard, the QSP has improved the mechanism of communicating Olympic selection information by determining the subject and content of the communication, and emphasizing the obligation to communicate after rules are modified.

#### 3.3.1 General information communication mechanisms

At the international level, the IFs are obliged to inform and ensure that any of their members, the NOCs and NFs are aware of the content and updates to the qualification system and other relevant information. Specifically, IFs should ensure that updates and communication of the relevant information are transmitted promptly, consistently and accurately. That is to say, they should avoid errors and ambiguities in the application of the rules as a result of multiple transmissions. For example, IFs should communicate directly with the NOCs, NFs and the sports department of the Olympic Games to determine the attribution of quota places.

At the domestic level, NOCs also have the notification obligation and should ensure that athletes and their internal members are aware of all information on the qualification system. In terms of confirmation of places, Article 22 of the QSP 2024 also imposes special procedural requirements on the NOCs. That is, the confirmation of an NOC to reject or accept the allocated quota places must be done in writing via email or letter or via any other official way of communication, which will be considered final and cannot be reversed.

#### 3.3.2 Updated information communication mechanisms

In order to ensure stability in the application of the rules and the reasonable expectations of the participants, the qualification system cannot, in principle, be modified once they have been approved by IOC and IFs. However, in view of the COVID-19 pandemic, people have realized that, in exceptional cases of force majeure, it was necessary to give IFs the authority to amend the rules in a timely manner to adapt to the change of circumstances. For example, the QSP 2020 and

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19. Shu Guoying (2005), "Searching for the problematic position of jurisprudence——Another discussion on the way of thinking of 'thesis learning jurisprudence'", in: Chinese Journal of Law, Vol. 03, pp. 3-20.

QSP 2024 authorized IFs to make amendments to procedural matters with the approval of the IOC Executive Board.

Modification of rules requires standardized communication mechanisms to be in place. In this case, the communication of information often has higher requirements on the time and the targets to be covered. The general rules are published earlier and have sufficient time to be understood by sports organizations and athletes at all levels, only need to ensure the consistency and clarity of the text in the process of communication. However, when special circumstances require previously published qualification system to be modified, which are often urgent and where qualifying events may have already taken place, it is important that the information is communicated to all levels of sports organizations efficiently and quickly so that participating countries have as much time as possible to receive the information and adjust their strategies. In order to ensure that the revised information can be transmitted layer by layer to each athlete, the QSP 2026 sets out detailed requirements for the notification of modifications, so that once IOC has confirmed the changes, the relevant IFs should publish the revised system in a timely manner and are responsible to communicate any amendments to the NOCs and NFs via their official communication channels. At the same time, the IOC is required to keep a change log and issue newsletters to NOCs via IOC NOCnet.

Generally speaking, contents of the Olympic QSP amendment every time, and there is also evolution between the rules. They're issue-oriented, compatible with the growth of the rule of law in international sports and can effectively solve the practical difficulties in the selection process of the Olympic Games and respond to the ever-changing realities of the needs through its own development.

#### **4 The Reform of Eligibility Governance for the Olympic Games**

In the operation of the selection for the Olympic Games, provisions are often vague, and there may even be conflicts between selection rules for the same sport, resulting in problems such as unclear division of authority, unknown type of quota allocation and stagnation of selection information, leading to the conflicts among sports organizations and ultimately causing disputes. In the area of the discretionary power of sports organizations, regulations at the international level have begun to bear fruit, but due to the limitations of the national sovereignty of each country, national sports organizations still have too much discretionary power over selection matters, which even jeopardized the athletes' right and interests. In the field of dispute resolution, reviewing from the practice of recent Olympic Games, the dispute resolution rules of the current QSP have not been effectively implemented, and its pre-arbitration consultation procedure is often vacated because of the consent of the parties to the disputes. In the field of information exchange, barriers between national and international sports organi-



zations still exists, absences of an official and formal interpretation of rules and understandings of rules by internal staff is the only option for many NOCs and NFs, but it is clear that the officiality and accountability of such interpretations are difficult to be guaranteed.

The QSPs of each Olympic Games are not perfect, and each guideline will make improvements to the previous practices, but also face new challenges. With the rapid development in sports competitions, the QSP, as an effective tool for the IOC to manage qualification system, needs to be based on the present and look to the future, deepen its understanding of existing problems, and regulate the Olympic selection mechanism from a higher institutional level.

#### **4.1 Strengthen Regulation and Supervision of National Sports Organizations**

During the selection process, domestic selection is often easy to be hostage to political or external forces, limited to the underdeveloped national sports, resulting in the simple selection rules and unclear selection procedures. Therefore, the rights and interests of athletes are inclined to be damaged and be ineffectively relieved. The QSPs focused on the authorities and competences of IFs and has little regulation on the more sensitive and complex domestic selection level. In view of this situation, the QSP should be based on the Olympic Charter to regulate and supervise domestic sports organizations in terms of the selectors, rules and procedures of selection.

In terms of selectors, the current QSP does not strictly require the selectors of domestic sports organizations. But in fact, the domestic selection mechanism is greatly influenced by the selectors, who may abuse the discretionary power given by the rules and damage the normal Olympic selection mechanism. So it is necessary for the QSP to add the provision suggesting that the NOCs should give full consideration to outstanding athletes, high-level coaches, and other professionals with rich sports knowledges or experiences in the composition of the selection committee, so as to expand the sources of selectors, make them on behalf of different interests keeping each other with check and balance, reduce the undue interferences of political or external forces in order to achieve goals of selection.

In terms of the selection rules, the QSP can adopt international sporting law principles as the basic requirements for sports organizations at the domestic level. As in *Mitchell Iles v Shooting Australia* case, CAS arbitrator restrained the excessive discretion of domestic sports organizations through general principles of law, such as good faith and reasonable expectation.<sup>20</sup> As a binding interna-

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20. *Mitchell Iles v Shooting Australia (SA)* (Award) (Court of Arbitration for Sport, Case No A1/2016, 30 June 2016)

tional document, the QSP can add general principles such as non-discrimination, fairness and *estoppel* to the obligations of domestic sports organizations through its provisions, so as to limit their discretionary power and reduce the harm to athletes caused by the abuse of power. At the same time, the QSP is also an important reference document for CAS, in which the inclusion of international sports principles to bind the NOCs also enables the Panel to apply these principles in a more legal, reasonable, and direct manner to supervise the abuse of discretionary power and to safeguard the legitimate rights and interests of athletes.

In terms of selection procedures, procedural fairness is the basis for substantive fairness, and the QSP should consider regulating procedural matters such as hearings and filings when requiring countries to comply with the minimum selection standards of the IFs. Specifically, the QSP could require the NOCs to arrange the hearing for each athlete when dealing with domestic selection disputes to ensure that athletes' opinions are heard and their procedural rights are met, and the QSP can also monitor countries' internal selection mechanisms in a flexible manner by requiring the NOCs to submit their selection rules to the corresponding IFs for review. For selection rules that do not meet international standards, they will be returned to their NOCs for modification, so as to prevent and resolve possible disputes through prior supervision. Procedural provisions have strong operability, and the QSP can start with procedural matters to gradually improve the regulation and supervision of selection procedures.

#### **4.2 Deepen checks and balances in the dual-track system of qualification**

Giovanni Sartori, a famous American political thinker, pointed out in *The Theory of Democracy Revisited* that power designed without checks and balances will eventually become absolute power, and absolute power leads to despotism and corruption.<sup>21</sup> The main purpose of the QSP is to promote the effective collaboration of sports organizations at the domestic and international levels, to guarantee the fairness of the Olympic Games selection and to avoid the overly large and monopolistic power of a particular organization in the selection mechanism. In view of the fact that disputes are still frequent, the QSP is still inadequate in regulating the power of sports organizations, and there is a need to re-examine checks and balances between sports organizations under the dual-track system of qualification.

It is undeniable that the QSP has made many efforts to subdivide the competence of sports organisations, especially as the current selection and supervisory body are independent of each other, the CAS can make more objective and fair judgments on disputes in Olympic selection from a neutral and objective posi-

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21. Giovanni Sartori (1987), *The Theory of Democracy Revisited*, Part Two: The Classical Issues, Chatham House Publishers: London.

tion. However, the static regulations and dynamic balances between sports organisations under the dual-track system have yet to be further regulated in terms of dispute resolution to give full play to its supervisory role. The QSP 2024 and QSP2026 stipulate that any disputes 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, and if the problem cannot be resolved, then it shall be exclusively to the CAS. Unfortunately, in practice, there is a lack of regulation on the period, manner or means of implementation of the consultation between the IF and the NOC, the ambiguity of the exhaustion of internal remedies and its exceptions, and disputes over the scope of internal remedies and the determination of fault, which, on the contrary, impede the resolution of disputes. Therefore, the following QSP should clarify the relevant provisions or make it optional between the parties to reduce the impact of uncertainties.

The current internal conflict resolution procedure between sports organisations is vacant in practice, and the pre-consultation procedure can often be easily circumvented. This reflects the tendency of judicialization of dispute resolution brought about by the intensification of power conflict and power imbalance among different sports organizations. In this regard, the QSP can make improvements in the following three aspects, and further deepen checks and balances between domestic and international sports organisations through the improvement of regulatory rules:

Firstly, IOC should pay close attention to the matters in dispute during the Olympic Games and take the initiative to provide the CAS panel with information that will help ascertain the facts and determine the interpretation of the rules, so as to provide practical assistance for the expeditious resolution of the dispute. With the consent of both parties, the IOC can also act as a mediator and participate in the negotiation process to facilitate the settlement of disputes in a reasonable manner.

Secondly, QSP may limit the preliminaries by requiring that the time for consultation or application of internal remedies be reduced to one day, after which the matter may be referred directly to the CAS. These speeds up the dispute resolution process while leaving some room for negotiation and internal remedies, so that the dispute resolution process matches the high-speed nature of sports competitions.

Thirdly, exceptions should be noted when asking for exhausting internal remedies. Article 1 of the *Arbitration Rules applicable to the CAS ad hoc division for the Olympic Games* provides that an application for arbitration may be accepted only after "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". While the expression is ambiguous and involves

much subjective considerations. Disputes during the Olympic Games often require an enforceable award within tens of hours in order to avoid disruption to the proceedings. In this context, the subjective nature of arbitration applications is not conducive to the efficient functioning of the process. Therefore, the QSP should refine the rule to specify that the final period for CAS applications before the next competition, and athletes can apply directly to the CAS if there is insufficient time to apply for an arbitration award. By limiting consultation and internal remedies, the lower and middle levels of the pyramid, such as the athletes and NFs, will be able to apply for CAS intervention more quickly to protect their rights to participate, and realize the balances on the right of NOCs, IFs or IOCs.

#### **4.3 Establish channels for consultation and collaboration on the Eligibility governance**

In the establishment of a new order for international sports organisations, "consultation and collaboration" has gradually become an organic chain for strengthening international sports governance, which runs through the whole process of formulating, implementing and distributing benefits.<sup>22</sup> There are already some manifestations of pluralistic participation and information communication in the QSP, but the coverage is relatively narrow and the protection is insufficient. In reality, the lack of voice of vulnerable groups and poor information communication are still serious problems. For this, the QSP should actively build a channel for consultation and collaboration at the qualification area, increase the participation of athletes and countries with late development of the sports industry, open up the channel of information exchange among sports organisations, and promote the rule of law and democratisation of the qualification system. The opening of this channel will encourage sports organisations such as the IOCs, IFs and NOCs to review their own rules and regulations, increase the level of support for disadvantaged countries and athletes, and improve the development of the Olympic qualification management.

The principle of consultation requires the joint participation of all stakeholders and advocates the adoption of an equal dialogue approach, so as to enhance the enthusiasm of the participating entities to participate in the formulation of rules and increase the degree of democratic consultation. In the current qualification system, the participation and voice of athletes and undeveloped countries are still at a low level, which needs to be improved in the following aspects: First, for countries where some sports are still in the emerging stage, international sports organisations should give more help and encouragement to promote

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22. Zhou Qingshan (2023), "Promoting International Sports Governance Reform Based on the Concept of a Community of Shared Future for Mankind", in: *Journal of Tianjin University of Sport*, Vol. 38: 02, pp. 221-226.

the emergence and progress of the sport in these countries. At present, the QSP promotes the active participation of countries and continents with different levels of sports development by setting the quota places for the tripartite commission invitations and continents representation system, etc. On this basis, the following QSP can further expand the channels of participation, increase the voice of these countries in the qualification management, and include sports representatives of the countries concerned from the rule-making stage, so as to take into account the real needs and characteristics of emerging countries from a diversified perspective. Second, the participation of athletes is still limited and undemocratic, while the QSP focuses on the division of right and responsibility between sports organisations, it should not ignore the subjectivity of athletes in these conflicts. Athletes participating in the Olympic Games, as the ultimate implementers of the rules, should have the right to elect independent athlete representatives to participate in the pre-rule-making process, to coordinate and supervise the proliferation of management right of sports organisations from the perspective of athletes, and to safeguard the rights and interests of them. Third, the mechanism of gender demarcation of athletes is being challenged, that is numerous transgender, intersex, and even transsexual people continue to emerge. As a minority group, their demands need to be conveyed by specialised sports representatives, who should be entitled to participate in the discussions and make reasonable comments at all stages of the selection process, including before, during and after the selection process.

The principle of collaboration means bringing the strengths of all parties together, building communication channels among sports organisations, and complementing the strengths of all relevant subjects, so as to achieve a high degree of integration of the strengths of all parties. The dual-track system at the qualification stage is not two sets of procedures operating in parallel, but an intertwined and interacting with each other. At present, the lack of effective communication channels between sports organisations at different levels prevents the formation of a synergy, and on the contrary, hinders the correct application of the qualification system. From jurisprudences in CAS database, some of the disputes originated from the fact that the officials of a certain sports organization gave instructions that were not in line with regulations, misleading the athletes or NOCs who went to enquire about the matter, causing them to train and register in accordance with incorrect selection rules and procedures, and in the end, the injured athletes could only bear the consequences of missing out on the qualification for the Olympic Games. In response to such problems, the QSP can take advantage of its applicability to sports organisations at all levels to construct a consultation and communication channel for selection information that vertically connects domestic and international sports organisations, and horizontally crosses different sports organisations, so that the IOCs and IFs, IFs and NOCs, NOCs and NFs can ascertain the understanding of the doubtful selection rules through the offi-

cial and formal channels, and reduce the errors in information transmission due to private communication. This communication platform could be set up within the framework of the IOC to ensure that it is official and legally binding. The interpretation of the rules by the IOCs, IFs and NOCs forms part of the rules, and that organisations are legally responsible for the information they communicate in this platform. This approach can also be used to counter misunderstandings caused by the personal nature of the person communicating in the CAS case, by placing a stricter obligation on respondents to ensure the accuracy and clarity of their answers, and ultimately, to make the flow of information about the Olympic selection process more efficient.

## 5 Conclusion

The QSP issued by the IOC has now become an important legal document for countries to prepare for the Olympic Games, promoting the continuous development and improvement of the eligibility governance. At the same time, the QSP is also the concrete embodiment of the basic principles of the Olympic Charter in the selection area, regulating the powers and obligations of each sports organization in selection matters, actively connecting domestic and international selection procedures, and effectively safeguarding the rights and interests of athletes. China is in an important period of transition from a large sports country to a strong sports country. We thus need to study the international sports rules in depth, improve and implement the relevant rules against international standards, which is not only conducive to safeguarding our athletes, but also effective in establishing the image of our country as a strong sports rule of law power, to make China's voice heard in the practice of the rule of law in international sports.

## References:

- Yulia Efimova v Russian Olympic Committee (ROC), International Olympic Committee (IOC) & Fédération Internationale de Natation (FINA), (Award) (Court of Arbitration for Sport, Case No OG 16/004, 4 August 2016)
- Rainer Schuettler v International Tennis Federation (ITF) (Award) (Court of Arbitration for Sport, Case No OG 08/003, 4 August 2008)
- Qiao Yijuan (2012), "Connotation of Eligibility for Athletes", in: Journal of Wuhan Sports University, Vol. 46: 09, pp. 30-35.
- Australian Olympic Committee v Fédération Internationale de Bobsleigh et de Tobogganing (FIBT) (Award) (Court of Arbitration for Sport, Case No OG 10/001, 9 February 2010)
- Qiao Yijuan (2010), "Review of cases of arbitration for the Vancouver Winter Olympics 2010", in: Journal of Physical Education, Vol. 17: 09, pp. 40-44.



Virgin Islands Olympic Committee v International Olympic Committee (IOC) (Award) (Court of Arbitration for Sport, Case No OG 18/001, 2 February 2018)

Japan Mountaineering & Sport Climbing Association v International Federation of Sport Climbing(IFSC) (Award) (Court of Arbitration for Sport, Case No 2019/A/6557&6663, 10 December 2020)

Oksana Kalashnikova & Ekaterine Gorgodze v International Tennis Federation (ITF) (Award) (Court of Arbitration for Sport, Case No OG 20/005, 23 July 2021)

Christoph Vedder(2023), “Olympic Law Today”, in: Southwestern Journal of International Law, Vol. 28:02, pp. 768-809.

Australian Olympic Committee v. Fédération Internationale de Bobsleigh et de Tobogganing (FIBT) (Award) (Court of Arbitration for Sport, Case No OG 10/001, 9 February 2010)

Japan Mountaineering & Sport Climbing Association v. International Federation of Sport Climbing(IFSC) (Award) (Court of Arbitration for Sport, Case No 2019/A/6557&6663, 10 December 2020)

Shu Guoying (2005), “Searching for the problematic position of jurisprudence - Another discussion on the way of thinking of ‘thesis learning jurisprudence’”, in: Chinese Journal of Law, Vol. 03, pp. 3-20.

Mitchell Iles v. Shooting Australia (SA) (Award) (Court of Arbitration for Sport, Case No A1/2016, 30 June 2016)

Giovanni Sartori (1987), *The Theory of Democracy Revisited, Part Two: The Classical Issues*, Chatham House Publishers: London.

Zhou Qingshan (2023), “Promoting International Sports Governance Reform Based on the Concept of a Community of Shared Future for Mankind”, in: *Journal of Tianjin University of Sport*, Vol. 38: 02, pp. 221-226.