



**INTERNATIONAL COURT OF APPEAL (ICA)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeals brought by Energylandia Rally Team**

**against**

**Decision No. 7 and Decision No. 8 dated 13 January 2024 of the Stewards of the  
2024 Rally Dakar counting towards the 2024 FIA World Rally-Raid Championship**

**Case ICA-2024-01-02**

**Hearing of 29 February 2024**

**Decision of 1 and 26 March 2024<sup>1</sup>**

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<sup>1</sup> The operative part of this decision has been notified to the Parties on 1 March 2024 and the full decision (with grounds) on 26 March 2024.



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), which comprised Mr Patrick Raedersdorf (Switzerland), who was designated President, Mr Mark Kletter (Austria), Mr Jean-Christophe Leroy (France) and Mr Fabio Mattei (Italy), held a hearing via videoconference, on Thursday, 29 February 2024.

Prior to the hearing, the Court received and considered submissions and attachments thereto made by Energylandia Rally Team and the FIA.

The following persons attended the hearing:

On behalf of the Appellant, Energylandia Rally Team:

Mr Marek Goczat, Team principal  
Mr Michal Gozcat, Crew member  
Mr Eryk Goczat, Crew member  
Mr Wojciech Zielinski, Attorney-at-law  
Mr Krzysztof Cieplinski, Attorney-at-law  
Mr Pawel Golebiowski, Attorney-at-law  
Mr Przemyslaw Chajduga, Attorney-at-law

On behalf of the FIA:

Mr Pierre Ketterer, Regulatory and Governance Director  
Ms Alejandra Salmerón García, Head of Regulatory  
Ms Prisca Mauriello, Senior Legal Counsel  
Mr Jérôme Roussel, Sporting Delegate  
Mr Christophe Vely, Technical Expert  
Mr César Abraldes, Competitor Relations Officer (Witness)  
Mr Arnas Paliukenas, Chairperson of the Panel of the Stewards (Witness)

Also attending the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA Courts)  
Mr Nicolas Cottier (Clerk of the FIA Courts)  
Ms Sandrine Gomez (Administrator of the FIA Courts)



The Parties filed written submissions and, at the hearing on 29 February 2024, set out oral arguments and addressed the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous interpretation in French and English. None of the Parties raised any objections, in relation either to the composition of the Court or to the manner in which the proceedings and the hearing were conducted, notably concerning the respect of the adversarial principle or the simultaneous interpretation.

## I. REMINDER OF THE FACTS

1. The 2024 Rally Dakar (“the Rally”) took place between 3 and 19 January 2024 and was divided into 12 stages.
2. During stage 6 of the Rally, the assembly of the gearbox on the engine blocks of five different vehicles, including cars Nos 302 and 310 of the Appellant (“the Cars”) was requested to be sealed.
3. On 13 January 2024, when all cars arrived at the Riyadh bivouac, the sealings of the five cars were removed. At that point, those teams were requested to disassemble the gearbox from the engines as well as the clutch systems, so that they could be inspected. Upon inspection, it was found that the clutch systems of the Cars were not in compliance with the technical regulations.
4. The FIA Technical Delegate, Mr Christophe Vely, and the FIA Assistant Technical Delegate, Mr Janez Flerin, compiled all the information in a report (“the Report”).
5. After the technical checks, the clutches of the Cars were sealed, which was acknowledged by Mr Patrick Gerritsen, who was acting as representative of the Appellant, as reflected in the relevant paper signed by the latter.
6. On 13 January 2024 at 19:00, after having heard the Appellant and the FIA Technical Delegate, and after having examined all the information and elements presented, the Stewards issued Decisions Nos 7 and 8 (“the Stewards’ Decisions” or “the Decisions”) whereby they disqualified the Cars from the Rally as the clutches of the Cars were found not in compliance with Article 286-2-3 of Appendix J of the International Sporting Code (“the ISC”). By means of the Stewards’ Decisions, the Appellant was reminded of its right to appeal in compliance with Article 15 of the ISC and Chapter 4 of the FIA Judicial and Disciplinary Rules (“the JDR”).
7. In separate decisions issued after the Appellant had filed a petition for review, namely Decisions Nos 20 and 21, the Stewards referred to the hearing held on 13 January 2024 before Decisions Nos 7 and 8 had been issued and mentioned that:



*Although this is not a matter of petition for review, the Stewards would also like to speak briefly about it, since the content of the petition for review refers to it.*

*It should be noted that in order to give competitors the opportunity to present their defense, Stewards informed the competitors of the time of the hearing and invited them to attend and participate in the hearing by summons.*

*When the competitor becomes aware of the planned hearing and its timing, it is up to the competitor to decide whether he wishes to exercise his right.*

*If the competitor does not come to the hearing without providing any additional explanation or request for this (for example, changing the time of the hearing, doing an online hearing, etc.), the hearing may also take place without the participation of the competitor. If competitors are represented by a specialist in some field who is more knowledgeable about the issue at hand, the Stewards listen to such a person as well. Stewards tend to always be benevolent towards the competitor and never make obstacles to the choice of a competitor. But the competitors have not only rights, but also obligations. The competitor must also act responsibly. During FIA events, competitors are aware of the CRO contacts that they can use if they want to make some kind of request, referral or so. And in longer - format FIA events, such as Dakar - 2024, the Stewards' communication published at the beginning of the event (which specifies the Stewards' schedule) also includes the contact details of the Stewards' secretary, creating an additional opportunity for competitors.*

*There are a lot of possibilities. But it depends only on the competitor whether he uses them.*

*In the present case, the competitor, after obtaining information about the planned hearing in the Stewards room and the summon, decided to send to the hearing specialists who were well versed in technical subjects, since the issue in question concerned technical issues. They made requests that the Stewards considered and satisfied (e. g. summoning to a hearing and interviewing a person, Mr. Thierry Viardot and so on). They presented the team's position, which is reflected in the decision of the Stewards (Doc No 2.10). Since the same position was expressed by the team members on social media after the Stewards' decision to disqualify the crews No 302 and No 310, this again further confirms that the team's position was presented during the hearing.*

*There were no other requests from the competitor's side (neither for the participation of the team principal or crew members, nor for the online hearing). To do so was the decision of the competitor himself.*



## II. PROCEDURE BEFORE THE COURT

8. The Appellant filed its two notifications of appeal on 17 January 2024 against the Decisions Nos 7 and 8. The ICA decided that given the close connection between the two appeals which were lodged against similar decisions involving the very same Appellant, they will be consolidated and jointly examined during the same hearing.
9. On 25 January 2024, the ICA informed the Appellant and the FIA that it had decided, pursuant to Article 10.6.1 of the JDR, that the issue of the admissibility of the appeals had to be decided by means of a preliminary decision. This was due to (1) the proof of the intention of appeal provided to the Stewards within the determined deadline being missing, and (2) the proof that the Appellant had informed its ASN or ACN of the appeal being lodged directly before the ICA being missing.
10. The Appellant, on 7 February 2024, and the FIA, on 21 February 2024, presented their written Observations on the inadmissibility of the appeals.
11. During the hearing remotely held on 29 February 2024, the Court heard the Parties and their witnesses which in essence confirmed the statements made in the Parties' written Observations and their appendices. The Appellant also confirmed during the hearing that it was well aware of the FIA Regulations. Yet the Appellant stressed in particular that it had not been aware of the hearing which had to take place before the Stewards as the FIA officials had only informed Mr Gerritsen of that hearing – which Mr Abraldes, the Competitor Relations Officer, confirmed during the hearing – even though Mr Gerritsen was not the Appellant's official representative but only the representative of one of the Appellant's suppliers.

## III. REQUESTS OF THE PARTIES

12. In essence, the Appellant asks the Court in its notifications of appeal to set aside the Decisions and to oblige the organisers of the Rally to communicate the ICA decision and to add the following mention next to the Appellant's name in the Rally classification:

*prevented from further competing through disqualification order which was further reversed due to its irregularity as a result of [an] appeal submitted by the competitor and sustained by the FIA International Court of Appeal.*

13. In its written Observations, the FIA asks the Court to declare the appeals inadmissible.

#### IV. ADMISSIBILITY OF THE APPEALS BEFORE THE COURT

##### a) *Arguments of the Parties*

14. The Appellant puts forward in essence the following:
- (i) On the issue of the proof of notification of its ASN, the Appellant explains that its ASN, namely the Polski Związek Motorowy (PZM), was informed of the appeals through a letter sent by the Secretary General of the FIA Courts shortly after the notification of the appeals. The Appellant explains further that it had not personally informed its ASN because it allegedly had to combine the intention to appeal with the notifications of appeal.
  - (ii) On the issue of the notification of its intention to appeal, the Appellant explains that it *“did not give their intention to appeal to the Stewards within one hour of the publication of the Decisions challenged on the digital notice boards”* for the following reasons:
    - a. *the Appellants were not heard by the Stewards and the Decisions in appeal were issued in their absence,*
    - b. *the Decisions in appeal were not notified to the Appellants, despite pronouncing such a severe sanction as disqualification,*
    - c. *publication on a digital notice board cannot substitute the regular notification process,*
    - d. *the Decisions in appeal contained misleading guidelines as to the appeal procedure, which actually made it impracticable to notify the intention to appeal within such a short period of time.*
  - (iii) The Appellant also claims that its right to be heard was violated.
15. The FIA contends in its written Observations, in essence, the following:
- (i) The Appellant voluntarily agreed to adhere and comply with the FIA Regulations, including the clear procedural rules to be found in the 2024 Cross-Country Rally Sporting Regulations (“the Regulations”), the ISC or the JDR.
  - (ii) Article 10.1.1 of the JDR determines the different procedural steps that need to be observed to notify an appeal and explicitly mentions that an appeal must include proof that the intention to appeal was given in writing to the Stewards within one hour of the publication of the decision (Art. 10.1.1.a. lit. d) JDR) and proof that the relevant ASN or ACN has been informed by the Appellant (Art.10.1.1.a. lit. e) JDR). The intention to appeal can be very simply communicated.
  - (iii) Article 10.4.3 of the JDR specifically determines that *“any notification of appeal or of intention to appeal made after the deadline shall result in the inadmissibility of the appeal”*.



- (iv) The PZM (ASN of Poland) confirmed in its letter dated 31 January that it had been informed of the appeals by the Secretary General of the International Court of Appeal and not by the Appellant.
- (v) The Decisions referred explicitly to Article 15 of the ISC and Chapter 4 of the JDR which contain the correct and necessary information for a competitor to file an appeal before the ICA.
- (vi) The Appellant's representative, namely Mr Gerritsen, received the Decisions and signed them. The Appellant's representative then went to the Stewards to file the intentions of appeal but ultimately decided to tear them off after a brief phone conversation with a third party, which proves, according to the FIA, that the Appellant was well aware of the procedure. The FIA adds that the Appellant's representative mentioned on their entry form was Rafael Cebula but that the latter was not physically present at the Rally. The arguments raised by the Appellant regarding Mr Gerritsen's lack of power of representation are therefore against the principles "*bona fide*" and "*venire contra factum proprium*".
- (vii) The publication of the Decisions took place through a digital notice board, called "Sportity", which is compliant with Article 11.9.4 of the ISC and the supplementary regulations of the Rally, and which the Appellant had full access to. This application gives access to the Decisions, including their time of publication, namely 19:30 in the present case. The FIA adds that this application has been in use since 2022 and that the Appellant had participated in the Rally since 2022, so that it was the third time that they were using this application. The Appellant had never raised any complaint about this application.

**b) Applicable Regulations**

- 16. The applicable rules are the FIA Regulations in force at the time when the Rally took place, namely between 3 and 19 January 2024.
- 17. As a result, the applicable regulations relevant to the present case are the 2024 Regulations of the Rally and the 2024 edition of the ISC. When it comes specifically to the Procedural Rules, since the notifications of appeal were filed on 17 January 2024, the applicable regulations are the 2024 edition of the JDR. As determined under Article 14.4 of the JDR, French law applies to the present proceedings.
- 18. Neither the Appellant nor the FIA dispute the above.



**c) Conclusions of the Court**

19. The operative part of the present decision was notified beforehand to the Parties on 1 March 2024.
20. Having carefully examined the written submissions made by the Appellant and the FIA, and the submissions and evidence addressed at the hearing, the Court rules as follows.
21. The Appellant claims that it could not exercise its right to be heard before the Stewards.
22. As the Court can review the case *de novo* in accordance with Article 10.10.1 of the JDR, any potential violation of the right to be heard before a previous authority is cured by the devolutive effect of the appeal before the Court, saved for those that have such an impact on the case that they can simply not be cured by the devolutive effect of the appeal (see ICA-2016-05 (*Yasir Seaidan*) and ICA-2020-06 (*Furon-Castelain*)), which is not the case here. As a consequence, any submission made by the Appellant regarding any “violation of its right to be heard” is rejected by the Court.
23. As mentioned above, a preliminary hearing was held by the Court in order to assess whether the Appellant had met the requirements set under Article 10.1.1.a of the JDR, which reads as follows:

*The appeal must be notified to the GSC by the FIA, the FIA Member, the person who is the subject of a decision of the IT or of the CCAP or any other person who has a legal interest to act. The GSC will issue an “acknowledgement of receipt” which shall indicate the time and date of receipt. For the purpose of any deadline, the time of receipt by the GSC, and not the time of sending, will be deemed conclusive. The notification of an appeal must include:*

*a) the identity of the Appellant (competitor, driver, organiser, FIA Member, person who has been the subject of a decision of the IT, or of the CCAP, etc.), a copy of the contested decision and the reasons for bringing the appeal,*

*b) any document proving that the appeal deposit has been paid to the ICA,*

*c) the signature of a duly qualified representative of the FIA Member who is bringing the appeal on behalf of the Appellant, where applicable,*

*d) where the appeal is one against a decision of the Stewards, proof that the intention of appeal was given in writing to the Stewards:*

- within one hour of the publication of the decision.*
- or in the case of a decision taken pursuant to Article 11.9.3.w or 14.1 of the International Sporting Code or in circumstances where the Stewards had considered that compliance with the one-hour deadline was impossible, within the time limit that the latter set down in writing in their decision (which shall not exceed 24 hours following the publication of the decision).*





*No notice of intention to appeal is required for any appeal by the FIA.*

*e) where the appeal is, pursuant to last paragraph of Article 9.1-1 or pursuant to Article 9.1-2 a), directly submitted by the applicant, proof that he has informed his ASN or ACN.*

24. Article 10.1.1.b of the JDR provides that *“any irregularity in the notification shall result in the inadmissibility of the appeal.”*
25. Based on the clear wording of Article 10.1.1.b of the JDR, the Court stresses first that the requirements set under Article 10.1.1.a must be strictly met by an appellant and that it leaves no room for manoeuvre to the Court when it comes to the application of this article.
26. The Court decides therefore that, in accordance with Article 10.1.1.a. lit. e) of the JDR, the appeals are inadmissible already on this first ground.
27. Secondly, the Court considered the issue of the notification of the Decisions and found that the latter were properly published on the platform “Sportify” used during the Rally. The Court notes first that the Appellant does not challenge this fact and confirms under paragraph 19 of its written Observations that the Decisions were indeed *“published through posting on the digital notice board.”*
28. As quoted above, Article 10.1.1.a of the JDR provides under lit. d), first bullet point, that, when it comes to the appeal against a decision of the Stewards, as in the present case, an appellant must join to its appeal proof that it gave its intention of appeal in writing to the Stewards within one hour *“of the publication of the decision”*.
29. It is undisputed that the Appellant did not file its intentions to appeal within the clear deadline set under Article 10.1.1.a. lit. d), first bullet point, of the JDR.
30. It also undisputed that none of the exceptions provided under Article 10.1.1.a. lit. d), second bullet point, of the JDR are applicable in the present case.
31. The Appellant argues that the Decisions were equivocal and did not indicate clearly what procedure was applicable. It refers to French law to support its submissions on this line of argument.
32. The Court rejects those submissions.
33. Indeed, the Decisions clearly referred to the specific parts of the ISC (Article 15), and of the JDR (Chapter 4) which describe clearly the procedural rules applicable when it comes to filing appeals before the ICA.
34. As to the application of French procedural rules, the Court stresses that the ICA ruled in the case ICA 2022-05 (*Mikhaylov*), the following:

*“Article 14.4 of the JDR means that the provisions of French law only apply on a complementary basis, either when obviously applicable to the issue at stake if*

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*not already covered by the FIA regulations, or if the FIA regulations explicitly refer on French law on a given matter [...].*

*The French Civil Procedure Code only explicitly covers proceedings before French state courts, and not those before private organisations' internal bodies (such as the FIA International Court of Appeal). The Court therefore concludes that the French Civil Procedure Code, which only applies to the proceedings before the ICA on a complementary basis, is not applicable to the issue at stake."*

*(see paras 34 and 35 of the Case ICA 2022-05)*

35. As both Article 15 of the ISC and Chapter 4 of the JDR provide for extensive procedural rules before the ICA, the Court thus concludes that French law does not apply in the present case on a complementary basis.
36. Given the above, the Court decides that, in accordance with Article 10.1.1.b of the JDR, the Appeals are inadmissible also on a second and independent ground, namely the absence of notification of the Appellant's intention to appeal within the one-hour deadline of Article 10.1.1.a. lit. d), first bullet point, of the JDR.
37. Having found that the Appeals were inadmissible on two separate grounds, the Court does not need to decide further on the issues raised by the Parties in relation to the alleged lack of power of Mr Gerritsen as representative of the Appellant.
38. However, the Court finds it necessary to recall that according to Article 9.15.1 of the ISC, the Appellant was *"responsible for all acts or omissions on the part of any person taking part in, or providing a service in connection with, a Competition or a Championship on their behalf, including in particular their employees, direct or indirect, their Drivers, mechanics, consultants, service providers, or passengers, as well as any person to whom the Competitor has allowed access to the Reserved Areas"*.
39. Even if it were the case that Mr Gerritsen acted foolishly without informing the Appellant of his various actions on their behalf, it remains that he indeed took part in various actions on behalf of the Appellant and that the FIA officials were in good faith referred to him by other people involved within the Appellant. The Appellant also did not react through any of its other representatives when the Decisions were published and therefore contributed to the perception in good faith of the FIA representatives that Mr Gerritsen was duly authorised to represent the Appellant.
40. The Court thus concludes that Mr Gerritsen was a *"person taking part in or providing a service in connection with"* the Rally on behalf of the Appellant. The alleged omission of Mr Gerritsen to inform the appropriate representatives of the Appellant is therefore the sole responsibility of the Appellant, as set under Article 9.15.1 of the ISC.
41. His omission to file the intentions to appeal within the set deadline would thus be opposable to the Appellant as well, which would lead on this point to the inadmissibility of the Appeals, would they not have already been declared inadmissible by the Court on the basis of the two separate grounds mentioned above.



**V. COSTS**

42. Considering the outcome of the proceedings, the Court awards the costs to the Appellant, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA, to be calculated by the General Secretariat of the Courts and notified later on.



**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the appeals inadmissible;**
- 2. Upholds Decision No. 7 and Decision No. 8 dated 13 January 2024 of the Stewards of the 2024 Rally Dakar counting towards the 2024 FIA World Rally-Raid Championship;**
- 3. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 4. Awards the costs to the Appellant, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA, to be calculated by the General Secretariat of the Courts and notified later on;**
- 5. Rejects all other and further conclusions.**

**Paris, 1 and 26 March 2024**

**The President**

**Patrick Raedersdorf**