

**INTERNATIONAL COURT OF APPEAL (I.C.A.)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal lodged by the  
Real Federación Española de Automovilismo (RFEA)  
on behalf of its competitor SEAT SPORT  
against Decision N°12 taken by the Stewards of the Meeting  
at the event run in Puebla (Mexico) on 22 March 2009 and  
counting towards the 2009 FIA WTCC Championship**

**Hearing of Tuesday 21 April 2009 in Paris**

The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprised of Mr. Jan STOVICEK (Czech Republic), who was elected President, Mr. Jean LUISI (France), Mr. Reginald REDMOND (Ireland) and Mr. Thierry JULLIARD (Switzerland), met in Paris on Tuesday 21 April 2008 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

The Court, ruling on the appeal lodged by the Real Federación Española de Automovilismo (RFEA) on behalf of its competitor SEAT SPORT (the “Appellant”) against Decision N°12 taken by the Stewards of the Meeting at the event run in Puebla (Mexico) on 22 March 2009 and counting towards the 2009 FIA World Touring Car Championship, heard presentations and considered arguments presented by RFEA and by the Fédération Internationale de l'Automobile (FIA).

Attending the above hearing were:

for SEAT SPORT: Mr. Carlos Ferrandiz (Lawyer)  
Mr. Jaime Puig (Director)  
Mr. Antonio Rodriguez Azorin (Team Manager)  
Mr. Gabriele Tarquini (Driver)

for the FIA: Mr. Pierre de Coninck (Secretary General FIA Sport, on behalf of FIA Sport)  
Mr. Sébastien Bernard (Head of Legal Department)

The parties presented oral arguments at the hearing. The parties answered questions put to them by the Court. The hearing took place in accordance with the applicable rules, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised. During the discussions, the adversarial principle was respected.

## REMINDER OF THE FACTS

1. This case concerns the race run at Puebla (Mexico) on 22 March 2009, counting towards the 2009 FIA World Touring Car Championship (WTCC) (the “Event”).
2. During the sixth lap of Race 2, a collision occurred involving car no. 2 of the team SEAT SPORT (Driver Gabriele Tarquini) and car no. 7 of the team BMW (Driver Jörg Müller).
3. This incident gave rise to Decision No. 12 of 22 March 2009 of the Panel of Stewards (the “Contested Decision”), imposing upon Mr. Tarquini a drive-through penalty and a drop of ten grid positions, both suspended for three events, for having caused a collision within the meaning of Article 42 of the 2009 FIA WTCC Sporting Regulations (the “WTCC Sporting Regulations”).
4. Article 42 of the WTCC Sporting Regulations stipulates that:

“Incident” means any occurrence or series of occurrences involving one or more drivers, or any action by any driver, which is reported to the Stewards by the Race Director (or noted by the Stewards and referred to the Race Director for investigation) and which:

- necessitated the stopping of a practice (free or qualifying) session or the suspension of a race under Article 152;
- constituted a breach of these Sporting Regulations or the Code;
- caused a false start by one or more cars;
- caused a collision;
- forced a driver off the track;
- illegitimately prevented a legitimate overtaking manoeuvre by a driver;
- illegitimately impeded another driver during overtaking.

5. Article 44 of the WTCC Sporting Regulations stipulates that:

The Stewards may impose any one of the following three penalties (in substitution or in addition to other available penalties) on any driver involved in an Incident.

- a) A drive-through penalty. The driver must enter the pit lane and rejoin the race without stopping.
- b) A 10-second Stop & Go time penalty. The driver must enter the pit lane, stop in the designated place for at least 10 seconds and rejoin the race immediately, unless the engine stops (cf. Article 45b).
- c) A drop of grid positions for the driver in a future race.

However, should either of the penalties under a) and b) above be imposed and notified in writing to the team representative during the last five laps, or after the end of the race, Article 45 b) below shall not apply and a 30-second time penalty shall be added to the elapsed time of the car concerned.

## PROCEDURE AND FORMS OF ORDER SOUGHT BY THE PARTIES

5. The Appellant lodged the present appeal with the Court Secretariat on 24 March 2009.
6. The Appellant claims that the Court should:
  - declare the appeal admissible;
  - declare the Contested Decision null and void;

- annul the penalty imposed by the Contested Decision.
7. The FIA, in its submission of 15 April 2009, claims that the Court should:
- reject the appeal as unfounded;
  - confirm the Contested Decision.

#### **APPLICATIONS BY AFFECTED PARTIES TO BE HEARD**

8. Under Article 21 of the ICA Rules of Procedure, the Court may hear any competitor in a major FIA Championship who so requests and who could be directly and significantly affected by the decision to be taken. The WTCC is a major Championship.
9. No competitor has applied to be heard in the present case.

#### **ADMISSIBILITY AND JURISDICTION**

10. Article 152, paragraph 5 of the International Sporting Code states that:

Penalties of driving through or stopping in pit lanes together with certain penalties specified in FIA Championship regulations where this is expressly stated, are not susceptible to appeal.

##### *a) Arguments of the parties*

11. The Appellant observes that the Contested Decision contained two penalties, one that could be appealed (namely, the drop of ten grid positions) and one that could not be appealed (namely, the drive-through penalty). As these penalties are contained in a single decision, the Appellant argues that the appeal is admissible.
12. The FIA did not raise any plea relating to the admissibility of the Appeal.

##### *b) Findings of the Court*

13. The Court recognises that the Appeal was filed in a timely manner and that the Court has jurisdiction in the matter.
14. The Court declares the appeal admissible in so far as the drop of ten grid positions imposed by the Contested Decision is concerned. The Court, however, finds the appeal inadmissible in so far as the drive-through penalty imposed by the Contested Decision is concerned, on the grounds that this penalty falls within the scope of Article 152, paragraph 5 of the International Sporting Code.

## ON THE SUBSTANCE

15. Although the Appellant has not drawn a distinction between the two penalties imposed by the Contested Decision in its arguments on the substance, the Court will hereafter only deal with the penalty that has been declared susceptible to appeal, namely the drop of ten grid positions.

### **First Plea - The Penalty Imposed is Not Justified or is Disproportionate**

#### *a) Arguments of the parties*

16. The Appellant argues that the grid position penalty imposed by the Contested Decision is not justified, or is disproportionate, given that Mr. Müller twice obstructed a legitimate overtaking manoeuvre from Mr. Tarquini, contrary to the regulations, by cutting Mr. Tarquini's trajectory in the curve, eventually causing both vehicles to collide. The Appellant submits that not only should Mr. Tarquini not have been penalized, but that the Stewards could have imposed a penalty on Mr. Müller for preventing a legitimate overtaking attempt by Mr. Tarquini.
17. The Appellant further maintains that the grid position penalty which has been imposed is in any event disproportionate when compared to other similar incidents during the same Event and during the 2008 FIA WTCC (as further described below) in which the Stewards did not impose any penalties despite similar behaviour.
18. The FIA argues that the Appellant's description of the incident has no basis in fact and is not supported by the video recordings produced by the Appellant as the recording does not show that Mr. Müller obstructed Mr. Tarquini in his attempt to overtake, but rather that Mr. Tarquini, not being in a position to overtake by any other trajectory, pushed Mr. Müller's car from behind, thereby unbalancing the latter, and that during the braking that followed, Mr. Tarquini attempted to brake on the inside, bringing about a second collision and causing Mr. Müller's car to leave the track. The FIA therefore argues that the Stewards correctly applied Article 42 of the WTCC Sporting Regulations with regard to incidents and rightly decided to sanction conduct that may have been dangerous.

#### *b) Findings of the Court*

19. After considering the submissions of the parties, the video recordings submitted by the Appellant, and the report of the Race Director submitted by the FIA, the Court observes that Mr. Tarquini is responsible for causing at least the first collision under consideration in this appeal, and thereby breached Article 42 of the WTCC Sporting Regulations. The Court notes that Mr. Tarquini recognized during the hearing that he could have avoided the first collision by reducing his

speed, but that he did not do so. He also recognized that, at the moment the first contact occurred, he was not performing an overtaking manoeuvre, contrary to what was stated in his grounds of appeal, but was positioning himself for subsequent overtaking.

20. The Court finds, however, that Article 44 of the WTCC Sporting Regulations allows the Stewards to impose only one of the three penalties foreseen by that Article (which does not prevent them from imposing one of these penalties in addition to other penalties, including those stipulated by Article 153 of the International Sporting Code). Considering that Article 44 does not permit the Stewards to impose a drive-through penalty in addition to a grid position penalty, the Court concludes that this aspect of the Contested Decision is not in conformity with the WTCC Sporting Regulations and that the grid position penalty should therefore be annulled.
21. In light of the fact that the drive-through penalty is not susceptible to appeal and that the drop of ten grid positions is found to be invalid pursuant to Article 44 of the WTCC Sporting Regulations, the Court finds that there is no need to further examine the First Plea.

## **Second Plea - Arbitrary and Discriminatory Treatment Against SEAT SPORT**

### *a) Arguments of the parties*

22. The Appellant claims that during the Event in question, SEAT SPORT and its driver were treated by the Stewards in manner that was arbitrary and different from other teams and that has prejudiced SEAT SPORT and its driver, in breach of Article 1 of the FIA Statutes. The Appellant points to the fact that, during the Event, the same Stewards did not penalize other drivers in similar incidents. They refer in particular to the incidents that occurred during the ninth lap of Race 1 between Mr. Tarquini and Mr. Andy Priaulx (team BMW) and during the third lap of Race 1 between Mr. Müller and Mr. Tiago Monteiro (team SEAT SPORT). Neither Mr. Müller nor Mr. Priaulx were penalized by the Stewards.
23. The Appellant further points to other similar incidents during the 2008 WTCC, in which the Stewards did not impose penalties for similar behaviour.
24. The FIA argues that prior decisions taken by Stewards in other incidents are of no relevance to the present appeal and refers to a decision taken by this Court of 23 July 2007 (appeal brought by ACI/CSAI on behalf of SEAT Sport Italia against Decision No. 8 of the Panel of Stewards of 7 July 2007 counting towards the 2007 WTCC), which held that any references to decisions or situations which do not relate to the case before the Court do not constitute relevant grounds for appeal. It further contends that examples to the contrary of similar incidents where the Stewards did impose a penalty for similar behaviour could be produced.

25. The FIA further states that the Appellant's statement that the conduct of its driver during Race 2 was conditioned by the events that occurred in Race 1, clearly demonstrates that Mr. Tarquini took "extraordinary initiatives" in his driving manoeuvres, which he wrongly expected would not be penalized.
26. The FIA also recalls that the Stewards have supreme power and absolute authority to ensure that the regulations are respected, notably by imposing penalties where these are infringed.

*b) Findings of the Court*

27. The Court rejects the Second Plea on the grounds that no convincing evidence of any arbitrary or discriminatory treatment has been produced. Furthermore, in assessing compliance with the regulations, the Stewards are perfectly entitled to consider each incident on its own merits.

### **Third Plea - Lack of Diligence in the Conduct of the Present Proceedings**

*a) Arguments of the parties*

28. The Appellant argues that its interests were harmed by the lack of diligence in the proceedings surrounding the notification of the Contested Decision, for the following reasons: (i) the Contested Decision did not make mention of the competitor's right to appeal; (ii) the Appellant's Team Manager was denied a copy of the report of the FIA Race Director to which the Contested Decision refers, due to which the Appellant was unable to ascertain the criteria used to describe the incident that was being penalized; and (iii) the Appellant was not handed any receipt confirming its payment of the €6,000 appeal fee.
29. The FIA argues that there is no provision in the regulations that requires the Stewards to send a report of the Race Director to a competitor when an incident occurs. The FIA holds that this report is an internal document, which is not necessarily formalized in writing and does not give rise to any formal communication to the competitor concerned.
30. In so far as the indication of the right of appeal is concerned, the FIA submits that this obligation does exist but applies only where the penalty imposed is susceptible to appeal. However, drive-through penalties are not susceptible to appeal pursuant to Article 152 of the International Sporting Code. While the FIA states that the Stewards should have indicated the competitor's right to appeal the grid position penalty, it contends that the failure to do so did not constitute a serious violation of the Appellant's rights of defence, as evidenced by the fact that the present appeals were brought.

*b) Findings of the Court*

31. The Court finds that the alleged irregularities raised by the Appellant have no effect on the regularity of the procedure, and that, in any event, no proof of harm has been shown on this account.
32. The Court rejects the argument that the Stewards are formally obliged in all cases to indicate a competitor's right of appeal in their decisions. The Court observes that fairness requires that parties be in a position to know whether or not they have a right to appeal. As this right is clearly set out in the fourth paragraph of Article 180 of the International Sporting Code and in Article 1 of the ICA Rules of Procedure, which are appended to the International Sporting Code, the Appellants were in a position to know of their right to appeal (and indeed have appealed). Stewards are not obliged to remind competitors of the contents of the International Sporting Code.
33. As regards the report of the Race Director, there exists no requirement that the Stewards make such a report available to a competitor, the Stewards' Decision being the relevant document that is subject to appeal.
34. With respect to the payment of the appeal fee, Article 14 of the ICA Rules of Procedure states that it is the responsibility of the Appellant to prove that the appeal fee has been paid. The receipt of a confirmation of payment is irrelevant to the regularity of the procedure.
35. The Court therefore rejects the Third Plea.

**ON THE COSTS**

36. Although the Contested Decision is found to be partially vitiated, the Court orders the Appellant to pay the costs of this appeal given that the grounds on which the Contested Decision is being partially annulled were not raised by the Appellant but were applied by the Court *ex officio*.

**ON THOSE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL**

**Hereby:**

- 1. Declares the appeal inadmissible in so far as the drive-through penalty imposed by the Contested Decision is concerned, this penalty thus remaining unaltered;**
- 2. Declares the appeal admissible in so far as the drop of ten grid positions imposed by the Contested Decision is concerned;**
- 3. Annuls the part of the Contested Decision that imposes a drop of ten grid positions suspended for three events;**
- 4. Orders the Appellant to pay the costs, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 21 March 2009

**The President**