

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

CASE

ACI (Automobile Club d'Italia)/

CSAI (Commissione Sportiva Automobilistica Italiana)

on behalf of its licence holder, OSELLA SARL,

against the decision of the National Court of Appeal of the

Slovak Association of Motor Sport (SAMS) handed down on 21 August 1998,

for the « Slovakia Matador » event run on 25 to 27 July 1998,

counting towards the European Hill-Climb Championship

Hearing on 7 December 1998 in Paris

/Translation

The INTERNATIONAL COURT OF APPEAL of the FIA, comprising Mr Vassilis KOUSSIS (Greece), elected President, Mr Edgar JULIEN (France), Mr J.W.G. van ROSMALEN (Netherlands), and Mr P.G. DAHLSTROM (Sweden).

Meeting in Paris on Monday, 7 December 1998, at the Headquarters of the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris,

Ruling on the appeal lodged on behalf of the competitor OSELLA SARL against the decision of the National Court of Appeal of the Slovak Association of Motor Sport (SAMS) handed down on 21 August 1998, for the «Slovakia-Matador» event run on 25, 26 and 27 July 1998,

After hearing for the ACI/CSAI and for Mr. Enzo OSELLA, competitor, Mr Roberto CAUSO, Lawyer with the Rome Bar Association, appellant; for the Slovak ASN (SAMS), Messrs. A. MICHALICKA, J.M. HRASOK and P. ILLES; and for the DMSB and the competitor STRAUBING, Mr Marcel GABAY, Lawyer,

After hearing as witness the driver Pasquale IRLANDO,

Having recognized that the proceedings were in order, and that the rights of all parties and witnesses had been duly examined both prior to the hearing and during the hearing itself, the parties and witnesses having been cross-examined and having supplied all detailed and relevant explanations when requested during the hearing with the aid of simultaneous interpretation which was deemed satisfactory by all parties,

WHEREAS the National Court of Appeal rendered a decision on an appeal against two other decisions taken by the Stewards of the Meeting at the « Slovakia Matador » event: on 26 July 1998 at 7:55 p.m. and the same day at 10:02 p.m., ruling respectively on the appeals lodged by the competitors STRAUBING against OSELLA and OSELLA against STRAUBING regarding the non conformity of the two competing cars, in relation to the provisions of the International Sporting Code,

WHEREAS before examining the circumstances surrounding this case, it should be noted that the convocation for the competitor OSELLA to appear before the Slovak National Court of Appeal was sent by fax on 19 August 1998 advising OSELLA that the hearing would take place two days later, on the 21 August in Nitra (Slovakia),

WHEREAS upon receipt of this convocation, the competitor OSELLA, via the CSAI, requested the hearing be postponed in view of the fact he would be running an event in the Hill-Climb Championship on the same day,

WHEREAS, nevertheless, without taking into account this conflict, the National Court of Appeal handed down its decision in the absence of at least the competitor OSELLA,

WHEREAS this competitor was thus unable to present his case, this constituting a manifest infringement on his rights to a defence,

WHEREAS, under these circumstances the International Court of Appeal has no choice but to quash the decision of the National Court of Appeal, in accordance with the most basic of principles,

WHEREAS the two decisions of the Stewards of the Meeting then had to be reviewed and deliberated in order to ascertain whether the appeals against those decisions had been properly lodged against them,

1. On the case of OSELLA against STRAUBING

WHEREAS, chronologically, the first complaint was filed by the competitor OSELLA against the competitor STRAUBING for breach of Article 260-3-8 of the International Sporting Code, registered on 26 July at 11:45 a.m. following the first race,

WHEREAS this complaint was ruled on in a decision taken by the Stewards of the Meeting the same day at 22:02 p.m., the Stewards judging that OSELLA 's complaint was admissible and had grounds, though no sanctions were imposed,

WHEREAS this decision was taken for no other reason but simply to mark the report of the Technical Stewards, who felt that OSELLA's complaint had no grounds; but no explanation was provided in their report to prove whether or not there were indeed grounds for complaint,

WHEREAS this decision, which was not justifiable, was neither drafted in nor translated into a language recognized by the FIA; in addition, it did not indicate if the claimant or the claimant's adversary had been heard; and whereas it was signed by two Stewards of the Meeting instead of three, as required by Article 134 of the International Sporting Code, and in addition, the Clerk of the Course had not been heard, in violation of Article 174-e of the International Sporting Code,

WHEREAS, under these circumstances, the decision of the Stewards of the Meeting handed down on 26 July at 22:02 p.m. is void in the light of the provisions of the International Sporting Code,

WHEREAS an appeal was lodged against this decision, which is admitted by the International Court of Appeal, although the appeal fee was not deposited within the hour, while it is shown that this appeal fee was, at least, deposited within the two day time period allowed by the International Sporting Code,

WHEREAS it is important to note that the appeal fee may be deposited at the latest at the time the appeal is lodged with the National Court of Appeal, meaning two days after the notification of the decision of the Stewards of the Meeting,

WHEREAS the most important thing was the decision to appeal, which was announced within the hour following the notification of the decision, and in this case, no proof is provided showing that any notification of the decision was made prior to this,

WHEREAS, consequently, confusion stemmed from the fact that the National Court of Appeal considered the deposit of the appeal fee as an intention to appeal, which was totally distinct from the fact,

WHEREAS, in sum, the National Court of Appeal deemed the appeal from OSELLA admissible, but declared it was late - this because of the confusion mentioned above,

WHEREAS, under such conditions, the decision rendered by the Stewards of the Meeting on 26 July at 22:02 p.m., in which the exclusion of OSELLA is not made evident, must be declared null and void, in addition to which STRAUBING did not produce any reliable, detailed documents proving an infraction had been committed by OSELLA,

WHEREAS consequently OSELLA cannot receive any sanction whatsoever on this point,

2. On the case of STRAUBING against OSELLA

WHEREAS the competitor STRAUBING filed a complaint against the competitor OSELLA on 26 July at 16:55 p.m. - after OSELLA's complaint had been filed the same day at 11:45 a.m.- and the Stewards of the Meeting handed down their decision at 19:55 p.m., announcing the exclusion of the competitor OSELLA on the grounds that this competitor's car did not conform to Article 259-13-5-1 of Annex J of the International Sporting Code concerning elements in the front suspension which were inside the cockpit, and for the

headrest which did not conform to Article 259-14-4-1 of Annex J of the International Sporting Code, as stated in the report from the Technical Stewards,

WHEREAS this decision was neither drafted in nor translated into any language recognized by the FIA; and while it was signed by three Stewards of the Meeting, it did not mention that the competitor STRAUBING or the competitor OSELLA were heard, or the Clerk of the Course either, in violation of Article 174-e of the International Sporting Code,

WHEREAS, even more so, the report from the Technical Stewards referred to included no explanation which might be able to justify the infraction,

WHEREAS, under these circumstances, the International Court of Appeal must declare the decision rendered by the Stewards of the Meeting on 26 July at 19:55 p.m. null and void,

WHEREAS concerning the appeal of this decision by OSELLA, who signed the notification of this decision at 20:25 p.m., an appeal was lodged against the decision with the FIA at 20:50 p.m. as mentioned in the original copy of the decision produced by the Slovak sport authorities,

WHEREAS the National Court of Appeal did not contest the fact that an appeal had been lodged but, confusing the intention to appeal with the deposit of the appeal fee, indicated that the appeal fee had been deposited only at 23:40 p.m., in other words after the one-hour deadline had expired, this because of the same confusion as in the case of OSELLA against STRAUBING,

WHEREAS, moreover, the almost white piece of paper termed the technical report provided no information which could lead to the conclusion that serious grounds for complaint existed for STRAUBING against OSELLA,

WHEREAS, consequently, the International Court of Appeal has no choice but to nullify as well the decision of the Stewards of the Meeting on 26 July at 19:55 p.m. following the complaint filed by STRAUBING against OSELLA,

WHEREAS, under these circumstances, the two cases, one being OSELLA against STRAUBING, the other being STRAUBING against OSELLA, had to be dismissed because no proof of any kind of infringement was submitted with regard to one competitor as much as the other,

WHEREAS it is interesting in addition to note the assertions of the representatives of the Slovak sporting authorities during the hearing, according to whom STRAUBING filed his

complaint against OSELLA at 16:55 p.m. after the second race only because he had learned that OSELLA had filed a complaint against him at 11:45 a.m. after the first race,

WHEREAS for the classification of the two races and the classification for the European Hill-Climb Championship, the FIA must establish these classifications taking into account the present decision,

ON THESE GROUNDS,

the INTERNATIONAL COURT OF APPEAL,

RENDERS null and void :

1. the decision of the National Court of Appeal of Slovakia handed down on 21 August 1998,
2. the decision of the Stewards of the Meeting of the event « Slovakia-Matador » handed down on 26 July at 22:02 p.m.,
3. the decision of the Stewards of the Meeting of the event « Slovakia-Matador » handed down on 26 July at 19:55 p.m.,

ORDERS, concerning the appeal fees, due to inadequate procedure, the National Sporting Authority (SAMS) to reimburse these fees to the competitors who deposited them,

DISMISSES as being unjustified in this case, the complaint filed by OSELLA against STRAUBING on 26 July at 11:45 a.m. and the complaint filed by STRAUBING against OSELLA on 26 July at 16:55 p.m.,

DECLARES that the FIA should establish or re-establish the classification of the event taking into account the present decision,

ORDERS OSELLA and STRAUBING, each for one half, to pay the costs of the appeal.

Paris, 7 December 1998

(signature)

The PRESIDENT