

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

of the

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE
(FIA)**

CASE:

**Appeal lodged by the Fédération Française du Sport Automobile
on behalf of its licence-holder, Eddy BENEZET,
against the decisions taken on 23 October 2000
by the National Court of Appeal of the country
hosting the event**

**Rallycross event run at Buxtehude (Germany)
on 1st October 2000 counting in the
FIA European Championship for Rallycross Drivers 2000,
Division 2**

Hearing of Monday, 11 December 2000 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr Jan van ROSMALEN (Netherlands), elected President, Mr Vassilis KOUSSIS (Greece), Mr Reginald REDMOND (Ireland), and Mr José MACEDO e CUNHA (Portugal),

Meeting in Paris on Monday, 11 December 2000 at the headquarters of the Fédération Internationale de l'Automobile (FIA-France), 8 place de la Concorde, 75008 Paris,

Ruling on the appeal brought by the Fédération Française du Sport Automobile on behalf of its licence-holder, Eddy BENEZET, against the decisions taken on 23 October 2000 by the National Court of Appeal of the country hosting the event concerning the event run at Buxtehude (Germany) on 1st October 2000 counting in the of the FIA European Championship for Rallycross Drivers 2000, Division 2;

Having heard the appellant, assisted by his Counsels, Alexandre de GOÜYON MATIGNON and Frédéric SAUVIN, lawyers with the Paris Bar; Mr Lars EDVALL, Secretary-General and representative of the Svenska Bilsportförbundet (Sweden), accompanied by the driver Magnus HANSEN, as well as the following knowledgeable parties: Mr Richard STOEN, FIA Observer at the event, Mr Jan BECKER, Drivers and Race Control Liaison Officer, Mr Bengt-Goran GRENANDER, member of the Panel of the Stewards of the Meeting of the event;

Having acknowledged that the procedure was in order and the appeal admissible, the rights of the parties having been duly examined, both in the proceedings which preceded the hearing and during the hearing itself, the appellant, the respondent and the witnesses having provided all the detailed explanations and answers requested during the hearing with the help of a simultaneous translation system which was recognised as satisfactory by the parties ;

WHEREAS, before any discussion, it is necessary to recall the facts of the case as they have been established, based on the relevant documents and the explanations provided by the parties;

WHEREAS following the event run on 1st October 2000 at Buxtehude (Germany) counting in the FIA European Championship for Rallycross Drivers 2000, Division 2, the competitor Eddy BENEZET, driving his Peugeot 306 S16 number 115 filed two protests against competitor Citroën Dealers Sweden, Citroën Xsara VTS 16V car N° 101 driven by Magnus HANSEN;

WHEREAS the first protest concerned the bumping by Magnus HANSEN of Eddy BENEZET's car at the first curve after the start; this constituted a shock which was sufficiently violent so as to seriously damage both cars; and the second protest concerned the technical non compliance of Magnus HANSEN's vehicle with regard to the valve springs and the pistons;

WHEREAS both these protests, in one and the same decision taken by the Stewards of the Meeting, were rejected – a decision which was not dated and which simply had differing notations with regard to the time – on the grounds that the protests were received too late, the first at 5:27 p.m. and the second at 5:30 p.m.; since the official results were posted at 4:55 p.m. the protests in question should have, in accordance with Article 174 d of the International Sporting Code, been presented at the latest thirty minutes later, in other words at 5:25 p.m.;

WHEREAS the decision of the Stewards of the Meeting, which it seems was rendered at 6:36 p.m. or 6:39 p.m., according to notations at the bottom of the page, was appealed before the National Court of Appeal of the country hosting the event within the set time limits by the competitor BENEZET;

WHEREAS this jurisdiction handed down two decisions, reference numbers DG 19-00 and DG 20-00, in which the appeal was declared to be groundless, the first on the grounds that the protest had not been presented to the Clerk of the Course, to his Assistant or to the Stewards of the Meeting, though this would not have been impossible to do, and the second on the grounds that the technical protest had been lodged at 5:30 p.m., in other words 5 minutes after the deadline, even though the Assistant Clerk of the Course, Mr Klaus STICH, had confirmed that he and the Stewards of the Meeting were in the designated area from 4:55 p.m. on and that they were available to receive any protests which might be filed;

WHEREAS regarding to the two protests filed by the competitor BENEZET, the International Court of Appeal must first examine if these protests were filed before the deadlines imposed with the officials in Article 173 of the International Sporting Code who accepted them;

On the admissibility

WHEREAS the International Court of Appeal must first note that the two protests have two different times, one for the sporting protest (5:23 p.m.), noted by the

Assistant Clerk of the Course, Mr Klaus STICH as 5:27 p.m., and one for the technical protest (5:27 p.m.), noted by the Assistant Clerk of the Course as 5:30 p.m., in other words several minutes after the 5:25 p.m. deadline;

WHEREAS the appellant maintains that he first tried to present his two protests to the Clerk of the Course, Mr Torsten FOCK, and to the Clerk's Assistant, Mr Klaus STICH, but that he was dismissed by both of them on the pretext that they did not have the time and that they had to go to the jury room;

WHEREAS the appellant claims he was unable to submit statements to either the Clerk of the Course or to the Clerk's Assistant, and thus went to the office of the Panel of the Stewards of the Meeting between 5:15 and 5:20 p.m., though was unable to lodge his protests because the Stewards were loudly debating another case for a race in Division 1 even though the race had taken place after the race of Division 2;

WHEREAS with the time passing, and unable to be heard by the Stewards of the Meeting under the circumstances as noted above, the appellant decided to go to the Drivers and Race Control Liaison Officer, Mr Jan BECKER, and submitted the two protests to this person so that he could immediately submit them, as was done, to the Panel of the Stewards of the Meeting;

WHEREAS in this respect it is necessary to recall the declaration made by Mr Jan BECKER, who, notably, during the hearing affirmed that he had received the two written protests from Eddy BENEZET at 5:23 p.m., that he had immediately given them to the Stewards of the Meeting, and that while Eddy BENEZET's second protest was ready at the same time, the Stewards of the Meeting took a while to officially receive the protests;

WHEREAS in addition Mr Richard STOEN, FIA Observer, confirmed that, concerning the filing of the two protests, Mr Eddy BENEZET had tried to give them to the Panel of the Stewards of the Meeting, but that the latter were busy; for this reason, Mr Benezet had within the time limits contacted the Drivers and Race Control Liaison Officer, Mr Jan BECKER, and that they had waited together in front of the door to the room where the Panel of the Stewards of the Meeting were dealing with another case involving another driver in Division 1, Mr Martin SCHANCHE; it was because of this discussion that they were forced to wait before Mr Jan BECKER was able to put the protests on the desk of the Panel of the Stewards of the Meeting;

WHEREAS the International Court of Appeal was obliged to compare these declarations with those made by Mr Torsten FOCK, Clerk of the Course, and by Mr Klaus STICH, Assistant Clerk; the first in a declaration to the Swedish party and the other before the National Court of Appeal, both implicitly recognising that Mr Eddy BENEZET had come to see them beforehand about a sporting and a technical protest, but that Mr Torsten FOCK, Clerk of the Course, had replied that he did not have the time;

WHEREAS the declarations made by Mr Klaus STICH at the hearing of the National Court of Appeal and by the two Stewards of the Meeting in a statement to the Swedish party must also be considered;

WHEREAS Mr Klaus STICH stated that:

“ I cannot remember exactly whether Mr Benezet and Mr Becker left the room after having delivered the first protest and the cheque to me or whether they stayed inside the room and handed over the second protest and the second cheque to me immediately. It is, however, a fact that the procedure in connection with receipt of the first protest which had taken a few minutes had been ‘completed’. When I started dealing with the second protest, some minutes had elapsed. ”

WHEREAS Mr STICH also stated:

“ At the last race of the season many persons appear at Race Control thinking that they have not been treated fairly and that therefore they had not won, and they think that they have to complain. So many drivers came to see us that day without us being able to find out immediately what they wanted and who of them wanted to lodge a protest or who only wanted to complain. I recognised Mr Benezet as a protester for the first time when he arrived together with Mr Becker and handed over the protests. I cannot say whether Mr Benezet had been inside the room before. So many persons entered the room before so that I cannot say whether Mr Benezet was one of them or not....I was not able to see Mr Benezet. I was sitting with my back to the door. ”

WHEREAS Mr Klaus STICH further declared:

“ I must, however, state that I know Mr Benezet as a calm, polite and reserved person. From a subjective point of view, it was certainly difficult for him to get attention against the loud and emotional Mr Schanche.....The discussion with Mr Schanche had taken place with almost the whole world. ”

WHEREAS Mr Helmut HAGEMANN, member of the Panel of the Stewards of the Meeting, declared:

“ If you ask me in detail whether I remember Mr Benezet when we, the Stewards Dehmel and Grenander, had a discussion with Mr Schanche, I can only say that there had been several persons inside the room and that I cannot remember Mr Benezet. ”

WHEREAS Mr GRENANDER, member of the Panel of the Stewards of the Meeting, together with Mr DEHMEL and Mr HAGEMANN, also gave a statement to the Svenska Bilsportförbundet in which he confirmed on the one hand that Mr Richard STOEN, FIA Observer, was in fact in the Jury Room and that, on the other hand as the door of the room was open, he very clearly saw Mr Eddy BENEZET pacing to and fro in front of the door (Mr Eddy BENEZET was wearing a bright pair of drivers' overalls); he added that the assistant Clerk of the Course, Mr Klaus STICH, arrived with Mr SCHANCHE, with whom he had had a discussion;

WHEREAS from the various declarations referred to above, at the least, a certain amount of confusion reigned in the Jury Room; Eddy BENEZET waited, before entering the room, for the heated discussion to calm slightly, with time still remaining before the deadline; and the Clerk of the Course and his Assistant were aware of the competitor's intention to file both a sporting and a technical protest, without mentioning the intervention of the Drivers and Race Control Liaison Officer, Mr Jan BECKER, whom he had called upon after encountering problems for meeting the Stewards of the Meeting;

WHEREAS the FIA Observer, Mr Richard STOEN, declared at the hearing of the International Court of Appeal that the President of the Jury, Mr DEHMEL, had told him that Eddy BENEZET had remained in the doorway of the Panel's room where the Jury was meeting because the Panel of the Stewards was busy dealing with the case of another driver, and that due to this, he had been unable to submit his protests earlier;

WHEREAS moreover it is clear to the International Court of Appeal that the two decisions numbered 19-00 and 20-00 taken by the National Court of Appeal are based on different grounds, as the first does not deal with the question of time but only the quality of the protester, and refuses, save in exceptional circumstances but which was not the case in this instance, the possibility of letting the Drivers Liaison Officer intervene with the race officials who are set out in Article 173 of the International Sporting Code, while the second decision deals on the contrary with the problem relating to the time (5:30 p.m.) which led to the late filing of the second protest, as

opposed to the first one in which there is no reproach regarding any failure to meet the deadline: “He (Jan BECKER) confirms having received a written statement by Mr Eddy BENEZET at 5:23 p.m., in other words within the time limits for filing a protest; this regards the first protest.....” ;

WHEREAS it is also clear to the International Court of Appeal that no official time registered by a valid time-keeping system existed, and that the different parties were each using their own personal watch;

WHEREAS under these circumstances, the competitor BENEZET cannot be seriously reproached for not having taken the necessary steps to present his protests at the times which are contested, and that even if the protests had not been submitted on time as the officials claim, in any case it would not have been possible to do so in the light of the difficulties encountered above; this was not the result of an error committed by BENEZET alone; under these conditions, the protests could not be considered inadmissible and the late filing could not be blamed solely on Mr BENEZET;

WHEREAS in this respect Articles 173 and 174d of the International Sporting Code specify that the protests must be “addressed” in the first of these articles and “lodged” in the second; this clearly refers to the time the protests are presented or submitted, and which must coincide with the time they are registered;

WHEREAS the protests could thus be considered admissible;

WHEREAS concerning the appellant’s claim that the Secretary-General of the Swedish Federation, Mr Lars EDVALL, and the driver, Mr Magnus HANSEN, should not have been heard by the National Court of Appeal during its hearing, it must be noted that Article 153 of the International Sporting Code specifies that if there is a possibility of exclusion – and this was the case in the presence of these two protests – the concerned party must be summoned in order to present its defence, not only by virtue of this article but also of important principles in Law which require the hearing of all arguments on both sides of a dispute;

WHEREAS the International Court of Appeal, reversing the two decisions taken by the National Court of Appeal and deeming the protests lodged by Mr Eddy BENEZET admissible, means, in its concern for the proper administration of justice, to recall the two protests lodged by the competitor so that it may rule thereon since the grounds of

the protests were not examined due to the fact they were declared inadmissible both by the Panel of the Stewards of the Meeting and by the National Court of Appeal;

On the appellant's protest regarding the sporting behaviour

WHEREAS the International Court of Appeal examined the documents submitted and viewed the video cassette, and nowhere in these documents did it come across any sign of improper conduct or unfair practice (Article 141) or any fraudulent conduct or act which was prejudicial to the interests of any competition (Article 151) as mentioned in the International Sporting Code;

WHEREAS it is certain that at the first curve after the start there was an indisputable rush forward by the different participants, and the driver in the lead, Eddy BENEZET, broke to round the curve without swerving off course, and that as a result, the driver behind him, Magnus HANSEN, took advantage of the opportunity to move up and maybe bump Eddy BENEZET, an unfortunate manoeuvre which however does not appear to have been intentional and can thus not be considered unsportsmanlike or unfair;

WHEREAS in this respect the International Court of Appeal must reject the appellant's request regarding his sporting protest;

On the appellant's protest regarding the technical aspect

WHEREAS the appellant complained about the non conformity of car N° 101 Citroën Xsara driven by Magnus HANSEN on the pretext that the valve springs and the pistons did not comply with the homologation form;

WHEREAS in this respect the driver Magnus HANSEN maintains he does not know anything about this because the Citroën company supplied him with a new engine for this race; the previous engine he had was tired after running all the events during the year, and at Buxtehude it was necessary to obtain the maximum level as this event would decide the winner of the European Championship for Rallycross Drivers;

WHEREAS it is important to dispel the slightest doubts about the matter; and consequently, the International Court of Appeal, before ruling, must order a scrutineering of the vehicle to examine if:

1. the valve springs of Citroën Xsara VTS 16 V vehicle n°101 belonging to the competitor Citroën Dealers Sweden and driven by Magnus HANSEN do or do not comply with the prescriptions in effect for the FIA European Championship for Rallycross Drivers 2000, Division 2;
2. the pistons on the same car do or do not comply with those same standards as well as how they compare with the original parts, and to measure them;

WHEREAS the scrutineer must carry out the scrutineering in the presence of the parties and their Counsels, who must be summoned to attend in due and proper form, and an FIA representative; and whereas the scrutineer must submit his report before 31 January 2001;

ON THESE GROUNDS,

QUASHES the two decisions referenced 19-00 and 20-00 taken on 23 October 2000 by the National Court of Appeal of the country hosting the event,

RE-RULING,

DECLARES the protests which were put forward by the appellant admissible at both sporting and technical levels,

At sporting level

DISMISSES the appellant's protests concerning the alleged unsportsmanlike behaviour of Magnus HANSEN,

At technical level

POSTPONES THE RULING

BEFORE TAKING A FINAL DECISION,

ENTRUSTS Mr Mike HARRIS – 19 Dawn Close – Ness – South Wirral L 64 4DS – Great Britain – with the following mission:

To examine if:

1. the valve springs on vehicle 101 Citroën Xsara VTS 16V belonging to Citroën Dealers Sweden driven by Mr Magnus HANSEN do or do not comply with the prescriptions in effect for FIA European Championship for Rallycross Drivers 2000, Division 2;
2. the pistons on the same car do or do not comply with those same prescriptions as well as how they compare with the original parts, and to measure them;

while the designated scrutineer must submit his report to the headquarters of FIA-France before 31 January 2001; this report must then be sent to the parties in question, along with the date for a subsequent hearing so that the parties have time to put forward their observations,

RESERVES the decision concerning the costs of the appeal until the final outcome of the case.

Paris, 11 December 2000

(signature of J.W.G. van ROSMALEN)

THE PRESIDENT