

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

of the

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

**Referral by the President of the FIA
by virtue of Article 11, paragraph 4
of the Statutes of FIA-France**

CASE:

**The Rallye Orpi-Maroc which was run on 23 to 27 May 2001
counting in the 2001 FIA World Cup for Cross-Country Rallies**

Hearing of Monday, 22 October 2001 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr José MACEDO e CUNHA (Portugal), elected President, Mr Michael LIMB (Great Britain), and Mr Jan van ROSMALEN (Netherlands);

Meeting in Paris on Monday, 22 October 2001 at the headquarters of the Fédération Internationale de l'Automobile (FIA-France), 8 place de la Concorde, 75008 Paris,

Ruling on the follow-up to the decision of the International Court of Appeal of 26 September 2001 wherein the examination of the case of the Rallye Orpi-Maroc was postponed until today, 22 October 2001, after summoning all the parties, notably for hearing the KLEINSCHMIDT/SCHULTZ team, drivers who were absent but excused from the hearing of Wednesday 26 September 2001 without prejudice;

After hearing:

The petitioner, the Automobile Club of Monaco, on behalf of the competitor Coli & Cie. (SCHLESSER/MAGNE team) represented by Mr Bruno SOTTY, Lawyer with the Dijon Court, as well as Mr SCHLESSER;

The Fédération Française du Sport Automobile, represented by its Director General, Mr Francis MURAC, assisted by Mr Jean-Pierre DUFFOUR, Lawyer with the Paris Court, on behalf of the competitor MMC Sales Ile de France, represented by its Sports Director, Mr Dominique SERIEYS;

The drivers KLEINSCHMIDT and SCHULTZ for the competitor MMC Sales Ile de France, assisted by Mr Matthias FELTZ, Lawyer with the Frankfurt Bar;

The FIA, represented by Mr Pierre de CONINCK, Secretary-General, Sport Department;

The knowledgeable parties, Mr Cyril NEVEU, NPO Organiser of the event, Mr Jean-Christophe PELLETIER, NPO Director, and Mr José PERROT, Race Director;

After recognizing that the due hearing of all parties was in order, that the rights of all parties were properly examined both prior to and during the hearing, that all parties were heard and provided the explanations requested and answered the various questions posed during the hearing by way of a simultaneous translation system recognized as satisfactory;

WHEREAS the petitioner, the competitor Coli & Cie., driver Jean-Louis SCHLESSER, thought they had to refer the case to the FFSA, maintaining that it appeared the competitor MMC Sales Ile de France, KLEINSCHMIDT/SCHULTZ team, may have been guilty of breach of the regulations for reconnaissance in the Rally of Morocco run on 23 to 27 May 2001, thereby violating the respect inherent in the principle of equality of the participants;

WHEREAS Article 10.1 of the Standard Regulations for FIA Cross-Country Rallies states that:

“Each crew shall receive a Road Book or maps indicating the route and/or compulsory Passage Control points, which they must observe on pain of penalties which may go as far as exclusion...”

Any form of reconnaissance of the route is prohibited, unless this is a special case proposed by an organiser and studied by the FIA. Before and during a Cross-Country Rally, it is prohibited for competitors who are entered or likely to enter to carry out, or cause to have carried out, the slightest reconnaissance of the route which could give them even a minor advantage. The possession of route notes other than those issued by the organiser is prohibited. Competitors who fail to respect these bans will not be permitted to take the start or will be excluded from the event.

The organiser of a Cross-Country Rally must guarantee to all competitors entered or likely to be entered in his event that no information concerning the route has been or will be divulged to anybody until the end of the event with the exception of the communications issued to all the competitors. Failure to respect this guarantee will result in the imposition by the FIA of sanctions which may go as far as exclusion from the World Cup for the following year.”

WHEREAS information provided by the competitor Coli & Cie., if proved true, could constitute a serious infraction, and whereas, referred by the FFSA because of the international dimension involved, the FIA President in his capacities granted by virtue of Article 11 § 4 of the Statutes of FIA-France and the 1st paragraph of Article 184 of the International Sporting Code, deemed it necessary to refer the case to the International Court of Appeal to hear this sporting dispute in order that all parties argue their case and submit any evidence in their possession;

WHEREAS the competitor Coli & Cie. produced before the International Court of Appeal hand-written notes in the German language from the KLEINSCHMIDT/SCHULTZ team which appear to be reconnaissance notes for the circuit and include often significant drawings and letters the translations of which are only known to the team members, and which would correspond, according to the competitor Coli & Cie., to the Circuit from Imghar to Ouarzazate – the circuit run on Sunday, 27 May 2001 on the last day of the event - and supported by a videocassette

recording showing the successive use of two documents handled in a different way: on the one hand, the official Road Book, and on the other hand, the hand-written reconnaissance notes of the circuit;

WHEREAS the competitor Coli & Cie. maintains that due to their precise nature, it is impossible that the hand-written notes were taken during the event as they refer to obstacles and landmarks on the circuit which are not included in the official Road Book, and that with the constant bumps, it would not have been possible for the driver or co-driver, due to the speed of the vehicle, to write anything let alone something in a book other than the Road Book;

WHEREAS in its memorandum, the competitor MMC Sales Ile de France maintains that:

Firstly, the direct referral to the International Court of Appeal by the FIA President is inadmissible as Article 171 and following of the International Sporting Code stipulate that the competitors must, for all protests, go to the Clerk of the Course and failing which, to a/the Steward(s) of the Meeting, within the short time limit set forth in Article 174 of the International Sporting Code.

Secondly, the proof produced by the petitioner cannot be considered at the hearing as it constitutes evidence which supposedly was stolen during the Prize-Giving Ceremony, even if the author of the theft was never identified following the complaint filed;

WHEREAS the drivers KLEINSCHMIDT and SCHULTZ take up this line of argument, adding the following considerations:

- a) the International Court of Appeal, in sanctioning, would violate the respect of a two-tiered judicial system which is the principle of all sporting cases provided for in, or governed by, the International Sporting Code ;
- b) notes from a hotel situated on the circuit, notes belonging to the KLEINSCHMIDT/SCHULTZ team 8 days earlier, had nothing to do with a reconnaissance of the circuit, Madame KLEINSCHMIDT being invited to attend an event organized by BMW;
- c) The possibility of maybe harmonising the Road Book, by virtue of Article 10.P.1.1 of the Specific Regulations of the event which specifies that Road Books for the following day's leg shall be distributed daily to each competitor after 5 p.m. from Race Control and not at the start of the leg itself;

* * *

WHEREAS before examining the substance, the legal arguments presented by each of the parties must be addressed;

1) Inadmissibility of the direct referral to the International Court of Appeal

WHEREAS Article 171 of the International Sporting Code and following, notably Articles 173 and 174, are not applicable in this case since the presumed discovery and proof of a possible infraction, which would be particularly serious, only came into light in this case after the running of the event;

2) Inadmissible nature of the production of documents submitted to the Court by the competitor Coli & Cie and its driver SCHLESSER

WHEREAS the KLEINSCHMIDT/SCHULTZ team, by way of the competitor MMC Sales Ile de France, submits that the so-called circuit reconnaissance notes would have been stolen during the Prize-Giving Ceremony, and a complaint was moreover filed; anyone using such evidence would be guilty of using stolen goods for which the team in question would reserve the right to file a complaint, as the previous complaint filed had not accomplished anything;

WHEREAS on the one hand the International Court of Appeal has in its possession only a photocopy of these notes; and as the supposed author of the theft of the documents was not found, as admitted by the defense in their own memorandum, therefore neither theft nor possession of stolen property, it being moreover a question of photocopies, can in this case be established;

WHEREAS on the other hand it is for the least surprising to note that the KLEINSCHMIDT/SCHULTZ team filed a complaint which could only lead, if fruitful, to the arrest of the guilty party and the disclosure of the possible infraction of the Rally Regulations and the International Sporting Code by the KLEINSCHMIDT/SCHULTZ team;

3) Non-respect of the two-tiered judicial system

WHEREAS the case was referred to the International Court of Appeal by the FIA President granted this power by virtue of Article 11 of the Statutes of FIA-France, which stipulates amongst the missions of the International Court of Appeal that the latter shall be called upon to hear “*any litigation of a sporting nature which may be submitted to it by the President of the FIA*”;

WHEREAS this same article provides that the International Court of Appeal “*will also hear: Appeals from decisions of the National Sporting Authorities...of the Stewards of the Meeting... appeals brought by National Sporting Authorities on behalf*

of organisers, competitors, drivers or... which has been the subject of a sanction pronounced by the World Motor Sport Council...in pursuance of Article 152 of the International Sporting Code”;

WHEREAS the word “to hear” should be interpreted as allowing the International Court of Appeal to directly inflict a sanction, in this case, as the first and the last jurisdiction;

WHEREAS it is therefore effectively an attack on the principle of the two-tiered judicial system;

But **WHEREAS** the license-holders, the competitors or the drivers accepted the attack of this principle which is set out in Article 58 of the International Sporting Code, which states that:

“Acquaintance with and submission to rules-

Every person, or group of persons, organising a competition or taking part therein:

1) Shall be deemed to be acquainted with the statutes and regulations of the FIA, this Code and the national regulations.

2) Shall undertake to submit themselves without reserve to the above and to the decisions of the sporting authority and to the consequences resulting therefrom.

In case of non-compliance with these provisions, any person or group which organises a competition or takes part therein, will have the licence which has been issued to them withdrawn...”

WHEREAS in this instance the International Court of Appeal, by virtue of the Statutes which govern the license-holders, competitors and drivers, is for this case the sole judge, which is explained within the framework of the prescription above found in Article 11;

4) Possibility of harmonising the Road Book because of Article 10.P.1.1 of the Specific Regulations

WHEREAS the competitor MMC Sales Ile de France maintains that as a result the teams can review their Road Book and harmonise the content with the other documents available to them, and if it were forbidden to work using the Road Book and to take personal notes using the Road Book, the book would not be distributed the night before the leg of the event, but at the start on the day of the event;

WHEREAS this provision in no way contradicts the Standard Regulations which stipulate that all forms of circuit reconnaissance are forbidden, and possession of notes on the circuit other than those of the organiser is strictly prohibited and punishable by not being permitted to take the start or exclusion from the event;

WHEREAS it is necessary in this respect to recall the terms of Article 56 of the International Sporting Code which states that:

« For all sporting competitions official documents must be drawn up, among which must always figure the Supplementary Regulations (see Article 27) and a programme (see Article 28). If any condition contained in these official documents is contrary to the present Code, it shall be null and void. » ;

WHEREAS consequently the so-called interpretation of the Regulations referred to must be rejected;

WHEREAS for its part, the competitor Coli & Cie. submitted to the Court two invoices from a hotel situated on the circuit of the event which were for, respectively, Ms KLEINSCHMIDT and Mr SCHULTZ, and which established their presence overnight at the event's location a week before the event took place, and therefore claimed that the team had made a reconnaissance trip to the circuit;

WHEREAS this assertion cannot be accepted as it does not in itself constitute proof of a reconnaissance trip to the circuit and is not corroborated by the production of any other proof to this end;

WHEREAS during the hearing Ms KLEINSCHMIDT and Mr SCHULTZ did not believe it necessary to formally recognize their handwriting on the photocopies on the pretense that the documents were not originals; they did not, however, deny that the handwriting in question resembled their own handwriting, and Ms KLEINSCHMIDT even went so far as to specify that it was Mr SCHULTZ's handwriting;

WHEREAS this team therefore maintained that these hand-written notes on the circuit were taken after the event and that they were not taken during the event itself, which is perfectly understandable given the material impossibility to write due to the violent and constant jolts in the car caused by the particularly bumpy road and the speed at which the vehicle was going;

WHEREAS while they could only have been written with difficulty after the event, they could have been written beforehand without it being possible to determine the conditions under which they were written;

WHEREAS while the video cassette serves to establish the fact that different documents were used during the race, there is nevertheless no proof brought to the effect that these documents were the hand-written notes regarding the circuit which were submitted to the Court, while, according to the knowledgeable parties, the circuit of the event the year before was practically the same;

ON THESE GROUNDS,

STATES AND RULES that the arguments put forward by MMC Sales Ile de France, KLEINSCHMIDT/SCHULTZ team, on the following points:

- inadmissibility of the direct referral to the International Court of Appeal - nature of the production of documents submitted to the Court by Mr SCHLESSER - non-respect of the two-tiered judicial system – interpretation of Article 10.P.1.1 of the Specific Regulations of the event - must be rejected;

STATES AND RULES that the International Court of Appeal does not find any formal and irrefutable proof that the hand-written notes under review were used or in their possession during the event.

LEAVES it to the competitor Coli & Cie. to bear all costs.

Paris, 22 October 2001

(signature of José MACEDO e CUNHA)

The PRESIDENT