



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

appeal brought by AF Corse

against

**Decision No. 29 dated 10 November 2019, taken by the Stewards of the 2019
4 hours of Shanghai (China), counting towards the 2019-2020 FIA World
Endurance Championship (WEC)**

Case ICA-2019-08

Hearing of Tuesday 28 January 2020 in Paris

Decision of 12 February 2020



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Michael Grech (Malta), who was designated President of the Hearing, Mr Hervé de Liedekerke (Belgium), Mr Jean Luisi (France) and Mr Nish Kumar Shetty (Singapore), met in Paris on Tuesday 28 January 2020 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by AF Corse s.r.l. (“AF Corse” or “the Appellant”) against Decision No. 29 dated 10 November 2019 (“the Decision”), taken by the Stewards of the 2019 4 hours of Shanghai (China), counting towards the 2019-2020 FIA World Endurance Championship (“the Race”), by which decision the Stewards decided to disqualify Car No. 51 for a breach of Article 205 of the 2019 Technical Regulations for Grand Touring Cars (“the WEC TR”).

The following persons attended the hearing:

on behalf of AF Corse:

Mr Battistino Pregliasco (Team Manager)
Mr Giuseppe Petrotta (Technical Director)
Mr Massimiliano Maestretti (Attorney at law)
Mr Andrea Fioravanti (Attorney at law)
Prof. Peter Bearman (Senior Research Investigator,
Witness)
Prof. Adriaan Beukers (Witness)
Mr Fernandino Cannizzo (AF Corse’s Technical Contact at
Ferrari, Witness)

on behalf of the FIA:

Mr Pierre Ketterer (Head of Department – Governance,
Integrity and Regulatory Affairs)
Mrs Alejandra Salmerón Garcia (Senior Legal Counsel)
Mr Manuel Leal (Technical Delegate WEC)
Mr Marek Nawarecki (Head of Activities
Administration/Categories Manager)
Mr Nicolas Gueranger (Representative of the Automobile
Club de l’Ouest (ACO), Observer)

Also present at 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 Appellant and the FIA filed written submissions and, at the hearing on 28 January 2020, presented oral arguments and addressed questions asked by the Court. The parties and the Court questioned witnesses who gave testimony at the hearing. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. None of the Parties raised any objection, in relation either to the composition of the Court or to the manner in which the proceedings were conducted.

REMINDER OF THE FACTS

1. On the occasion of the Race, the Stewards received on 10 November 2019 at 17:20 a report from the Technical Delegates Manuel Leal (“the FIA Technical Delegate”) and Thierry Bouvet (“the ACO Technical Delegate”) regarding the post-race scrutineering (“the Report”).
2. The Technical Delegates reported Car No. 51 of AF Corse, a Ferrari GT car which competes under the LMGTO Pro Category and which placed in first position at the end of the Race (“the Car”), for an alleged “*infringement of Art. 205 of the Technical Regulations of the Championship*” as “*the minimum clearance [had] been found lower than 50 mm*”.
3. Following this Report, the Stewards summoned the Team Manager of AF Corse on the same day, at 17:38.
4. AF Corse replied in writing that same day, mentioning notably that “*(...) after the post-race scrutineering we acknowledge that car 51, is not conform with the left side ride height of the front splitter. We accept the measurement done from the Fia (sic) Technical Delegate*”.
5. Having heard AF Corse and after having checked the Car and analysed the documents in their possession, the Stewards determined that AF Corse had breached Article 205 of the WEC TR and issued the Decision at 20:47.
6. The Stewards decided that:
 - “1) *The Competitor is disqualified;*
 - 2) *(...) The Classification has to be amended so that the other competitors move up in the Classification in accordance with Art. 12.18 of the ISC;*
 - 3) *Any awards or prizes should be returned to the organizer and issued to the competitors moved up in the classification.*”
7. The Stewards’ Decisions reads, in essence, as follows:

“The Technical Delegates explained that the measurement was done when the car was in racing conditions and no changes had been done in Parc Fermé. The ground height on the left-frontside was found under 50 mm. The Team Manager Batti Pregliasco and the Technical Director of the team Giuseppe Petrotta explained that they accepted that the ground height on the left side was found not in compliance with the regulations and they presume that either due to an incident in the first lap in the first corner with a Porsche car or because of a contact with car nr. 62 something on the car was bended or broken. After lifting the car without dismantling no oil leaking or visible damage on the car has been proved. Also the Competitor accepted that with the additional control no damage of the suspension or other parts could be visible. After the checks carried out the stewards find no acceptable explanation for lower ground clearance”.

8. On 10 November 2019, at 21:36 (local time), namely within one hour of the publication of the Decision, AF Corse notified the Stewards in writing of its intention to lodge an appeal against the Decision.
9. Subsequently and on the same day, the Stewards issued Decision No. 30 under which the Stewards ordered the Technical Delegates to *“seal and retain the car Nr. 51 until the time for lodging of appeals or the completion of any appeal. Also the place where the car is stored will be sealed”.*
10. The Car was sealed on 11 November 2019 in the presence of Mr Battistino Pregliasco, Team Manager of AF Corse.
11. AF Corse filed its appeal on 14 November 2019, and on 15 November 2019 it requested from the President of the ICA the following procedural measures:
 - “1) To order the FIA to provide the Appellant with the full video recordings taken during the “4 hours of Shanghai” by the three on board cameras mounted on the Appellant’s car and on car no. 92;*
 - 2) To perform a dismantling of the Appellant’s car;*
 - 3) To unseal the Appellant’s car after the dismantling so that the car could be shipped to Bahrain;*
 - 4) To order that the deadline provided to the Appellant to fill its grounds of appeal shall start after the dismantling of the car”.*
12. On 20 November 2019, the President of the Hearing issued Decision No. 1, indicating that AF Corse’s request regarding the videos had already been satisfied by the FIA, that the FIA was to provide the pictures taken by the FIA Technical Delegates during the additional checks, and ordering the removal of

the seals from AF Corse's car, allowing its transportation to Bahrain subject to receipt of a written waiver by the Appellant of the dismantling and inspection of its Car as additional evidence in the procedure.

13. AF Corse first acknowledged receipt of Decision No. 1 of the President of the Hearing, taking note of the conditions set by the latter. AF Corse, however, stressed that it considered this decision to be based on incomplete information and thus reserved its rights in this respect, arguing that it had nevertheless to accept the conditions imposed by the President of the Hearing as it needed the Car in order to participate in the competition which was to take place in Bahrain. After a second exchange with the President of the Hearing, AF Corse confirmed its waiver.
14. According to the "Sealing Report no. 2" issued by the ACO Technical Delegate, Mr Nicolas Gueranger, *"the car has been unsealed in the presence of the competitor, who recovers the full control over it as from now. The seals previously applied to both the sea-freight container and the car have been found intact before removal"*.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

15. As mentioned above, at the commencement of the proceedings, the President of the Hearing issued a preliminary Decision concerning the procedural requests filed by the Appellant (Decision No. 1 of the President of the Hearing, dated 20 November 2019).
16. The President of the Hearing issued two other preliminary Decisions based on the corresponding requests filed by the Appellant. Under Decision No. 2, dated 29 November 2019, the President of the Hearing ordered the FIA to communicate Report No. 6 of the FIA Technical Delegate, and under Decision No. 3, dated 16 January 2020, allowed Mr Alessandro Pier Guidi and Mr Johnny Mowlem to be heard via videoconference. In the end, it was not necessary to have these drivers heard during the hearing, since the FIA renounced any cross examination of these witnesses.
17. In its Grounds for Appeal, filed on 19 December 2019, the Appellant made the following requests from the Court:

"(a) the Appealed Decision shall be set aside;

(b) the Classification of the Race shall be amended so to reinstate the Competitor in the first place; and



(c) the Competitor shall receive all awards or prizes it has returned to the organizer in compliance with the Appealed Decision.

In the alternative, should the Court decide that the Appellant must nevertheless be sanctioned, the Appellant respectfully submits to the Court that the penalty of disqualification shall be replaced by a less severe sanction as a reprimand or a fine and that therefore:

(a) the Classification of the Race shall be amended so to reinstate the Competitor in the first place; and

(b) the Competitor shall receive all awards or prizes it has returned to the organizer in compliance with the Appealed Decision.

In any case, the Appellant respectfully submits to the Court to:

(a) order the return of the appeal deposit paid by the Appellant; and

(b) refrain from making any order that the Appellant should pay any part of the ICA's costs pursuant to Article 11.2 of the FIA Judicial and Disciplinary Rules".

18. The FIA, in its Grounds in Response received by the Court on 14 January 2020 (English version) and 20 January 2020 (French version), asked the Court to:

"i. further to Article 10.9 of the JDR, dismiss the Appellant's appeal, and confirm the Corse Decision [i.e. the Decision] in its entirety, both as to breach of Article 205 of the WEC Technical Regulations and as to penalty for that breach; and

ii. order the Appellant to pay ICA costs of the appeal referenced in Article 11.2 of the JDR of the FIA".

ADMISSIBILITY

19. The Court acknowledges that the Appellant filed its Appeal in conformity with the FIA Judicial and Disciplinary Rules ("JDR").

20. The Court also finds that it has jurisdiction in the matter.

21. Therefore, the Court declares the appeal admissible, which is undisputed.



ON THE SUBSTANCE

a) *Arguments of the parties*

22. The Appellant claims in essence that:

- a) The Car was involved in no less than 3 incidents.
- b) As reflected in a report from Mr Ferdinando Cannizzo and through the witness statement of Mr Pregliasco, the Appellant's Technical Contact at Ferrari, all Ferrari GT cars participating in the WEC Championship have a ground height clearance far above the 50 mm prescribed by Article 205 WEC TR, so that the alleged non-compliance of the Car was a total surprise to the Appellant and even to the Technical Delegates.
- c) The Appellant's declaration on the Car's non-compliance was requested by the Technical Delegates as a condition for proceeding to the further checks requested by the Appellant. In the end, only limited checks were done and, for unknown reasons, the officials refused to perform additional verifications of the Car in the area where the lowering of the ground clearance had been assessed. During the said limited checks it was not possible to find out what had caused the Car to be lower on the front left side.
- d) In any event, the alleged non-conformity of the Car related only to a specific and limited area of the Car, namely the front left side, whereas, according to the Appellant, Article 205 WEC TR requires the entire Car to have a ground clearance lower than the 50 mm limit for a Car to be found in breach of the regulations.
- e) The set-up found on the Car, namely with a ground clearance lower on the front left side only, therefore makes no sense as it has a negative impact on the Car's performance as confirmed by Prof. Peter Bearman, an expert in aerodynamics at Imperial College, London.
- f) As already explained by the Appellant before the Stewards, its view is that the alleged non-conformity was due to at least 3 incidents which occurred during the Race and notably with Car No. 92 driven by Mr Mowlem. According to the Appellant, the signs of those incidents were clearly visible by looking at the left side of the Car, which notably shows unequivocally a blue paint mark along the rim of the fender. The Appellant also referred to its Exhibit 1 and Annex 23 and moreover referred to Appendix 4 attached to the FIA's response.



- g) The Appellant contends that the energy generated by the impact was transmitted to the splitter and that, even though it does not show much, there are visible signs.
- h) Basing itself on the principle of “comfortable satisfaction” as opposed to “balance of probabilities”, the Appellant contends that it has therefore satisfied its burden of proof as to the cause of the breach found by the Technical Delegates. The Appellant submits that its hypothesis is not only probable but constitutes the only plausible explanation.
- i) As the Appellant found out when it performed further checks on the Car after its unsealing, it appeared that the alleged non-conformity was caused by the rupture and damage to the back-up structure supporting and controlling the Car’s ground to splitter clearance. This was confirmed by Prof. Beukers. Based on the foregoing, the Appellant requests that this new evidence be considered by the Court and that the waiver it signed for the unsealing be considered as ineffective. The Appellant claims further that Decision No. 1 of the President of the Hearing was incorrectly influenced by the FIA’s lack of co-operation, which unduly prevented the Appellant from gathering even more conclusive evidence in support of its arguments.
- j) Quoting various decisions issued by Stewards, namely Appendices 24 and 25, the Appellant alleges that this case is a case of accidental damage and not a case of non-compliance. The Appellant claims that an incident, accident or damage was the cause of the technical infringement.
- k) As the Court may review the case *de novo* the Appellant contends that the Court should take into account the new evidence gathered after the unsealing of the Car. Given the Stewards’ refusal to proceed with further checks, should the Court not accept this new evidence, the Appellant’s rights of defence would be breached.
- l) In any event, the attitude of the Stewards and of the FIA should lead the Court to draw an inference in favour of the Appellant.
- m) The Appellant further submits in favour of its third grounds for appeal that its rights of defence had been severely breached by the FIA through the decision of the Stewards and through the inaccurate, confusing and partly misleading information provided by the FIA to the Court. The Appellant further contends that it was suffering from evidence calamity as it was not allowed to bring forward the best proof. It also states that in view of this lack of cooperation the burden of proof on the Appellant should be lowered.



- n) The Appellant also contends that exceptional circumstances exist, since the evidence clearly indicates that the technical infringement was caused by an accident and so there was no deliberate non-conformity. Reference was also made to the fact that there was no competitive advantage, and actually they were disadvantaged.
- o) Based on the principle of proportionality and as reflected in ICA 2014-3, no sanction should be pronounced, or at least a milder sanction should be imposed on the Appellant, as the irregularity was caused by an incident, was not deliberate, did not give any competitive advantage to the Appellant and, according to other decisions issued by Stewards, technical irregularities caused by incidents are not sanctioned.

23. The FIA contends in essence that:

- a) In principle this case dealt with a simple issue, namely that Car No. 51 was not compliant and that its non-compliance was related to an objective criterion. It also contended that a change in the splitter clearance brings about a change in aerodynamics and thus affects performance. The Stewards found that the ground clearance of the Car was less than 50 mm and so they disqualified the Car with reference to Article 205 and to Report No. 6 of the Technical Delegates.
- b) With reference to the Appellant's grounds that the right of defence was not respected, the FIA submitted that the Appellant's right to be heard was respected by the Stewards, in the sense that the Appellant had been duly informed about the charges against it and was given the opportunity to analyse the checks made by the Stewards. The fact that the Stewards considered the two inspections of the Car to be sufficient to reach their Decision, and did not consider the dismantling of the Car to be necessary, does not mean that the Appellant's right of defence was not respected. The Stewards have a discretionary power to decide on which evidence to consider. In any event, the fact that the ICA can review the case *de novo* remedies any violation of the right to be heard before the Stewards.
- c) Besides, Decision No. 1 of the President of the Hearing also respected the Appellant's right to be heard, since the President of the Hearing took into consideration the submissions of both parties before issuing his Decision, which is final and cannot be appealed before the Court, based on Article 10.7 of the JDR and paragraph 47 of the Practice Directions of the ICA. The FIA further contends that the President of the Hearing had a discretionary power to decide which evidence to take into account and thus could have excluded the submissions brought forward by the FIA. The FIA further



contends that, contrary to the Appellant's allegations, its submissions were correct as they were based on visual checks.

- d) As to the merits of the case, the FIA stresses that the Stewards conceded the request of the Appellant to carry out an additional check and decided to have the Car lifted in order to check if there was any evidence of any accidental damage in the suspension and/or the underbody. It was then observed that (i) there were no fluid leaks from the car, (ii) neither the shock absorbers nor the suspension arms, joints and links were damaged, (iii) the bodywork split lines did not show any abnormal gap, (iv) the only contact traces that could be observed were the blue traces at the left side wheel arch and at the right splitter dive plane, which is normal in such type of races, and (v) the black traces on the Car corresponded to the hits of rubber marbles left over from the tyres of the other cars competing in the race.
- e) Provided that the breach of the regulations was the ground clearance, any disassembling of any bodywork from the Car, including the splitter, would have permanently altered the non-compliance evidence. As a consequence, it was not possible to dismantle and check the parts which were found irregular.
- f) Contrary to the Appellant's claim, the FIA puts forward that a proper check of the Car would have required the creation of a dismantling sequence and every single element of the Car would have to be measured. The FIA claimed that if it allegedly took the Appellant 30 minutes to do the dismantling, it is because it did know where it had to look, namely at a well-known weak point of the splitter fixing device.
- g) The Appellant itself confirmed, willingly, in writing and without any reservation, that its Car was not compliant.
- h) As to the meaning of Article 205 WEC TR, the FIA explains that it determines that no single part of the vehicle may be below the minimum 50 mm height, which means that the block mentioned in this article shall fit under any part of the car. The FIA notes further that the Appellant never asked for a clarification of the exact meaning of this Article.
- i) The compliance with the WEC TR is an absolute and objective one as mentioned in several ICA cases (for instance ICA-2018-04, ICA-2013-03 and ICA-2010-03). The arguments on lack of performance and of intention are irrelevant. Furthermore, there is no proof that the Car was compliant before the Race.



- j) The burden of proof that the technical infringement was due to accidental damage rests on the Appellant. In that context, the FIA explains that no incident or accident was reported during the Race. Although this indeed does not prove that no incident occurred at all, it means that if any incident occurred it was not relevant enough to be officially reported. The FIA notes further that the Appellant did not lodge any protest during the Race in relation to a potential incident involving its Car. The FIA did state that if proof is brought by the Appellant that there was an accident or incident, and that this was the cause of non-compliance, then it agreed that the sanction could be mitigated. The FIA claims that it accepted both (i) clerical and homologation mistakes; and (ii) an accident or incident which causes damage, as an exceptional circumstance.
- k) The Appellant admits that only one incident needs to be taken into consideration. However, it did not provide any visual evidence that could support its position, but only the witness statement of the driver of Car No. 62, namely Johnny Mowlem, who admitted that the contact was a usual one, and also the witness statement of its own driver who claimed that he *“was really scared to have broken something in the front left suspension/wheel”*. On this statement, the FIA claims that the Appellant should have stopped the Car, and the team, namely AF Corse, should have called in the Car. By allowing the Car to continue racing, the Appellant’s team took the risk that their Car was not compliant with the WEC TR.
- l) As to the witness statement of Prof. Adriaan Beukers, the FIA argues that this testimony should be disregarded, as it is based on the Car’s dismantling when the Appellant confirmed that it would waive its rights to bring the outcome of such dismantling as new evidence.
- m) The Appellant knew beforehand that the front splitter cables, which, according to the FIA, are specifically designed to hold and support the front splitter and prevent it from lowering itself, presented some problems, and this almost five months before the Race. Reference was made to correspondence exchanged between the team and the FIA. The FIA also submits that, considering that the Car had ballast during the Race, this weakness was made even worse given the increasing fatigue stress that the ballast caused to the cables.
- n) Based on the foregoing, the FIA concludes that the technical infringement could have been caused by several factors, such as the negligence of the team whether in the maintenance or set up of the Car or during the Race.



- o) According to ICA jurisprudence, the Court cannot review a sanction if it has a regulatory basis and when it is not obviously disproportionate, which is the present case according to the FIA.
- p) In line with previous Decisions of the ICA, the sanction of disqualification must be imposed whenever there is a technical irregularity and there are no exceptional circumstances. No clear exceptional circumstances were brought forward by the Appellant in the present case. Technical compliance is important as it ensures fairness, sporting equity and safety.

b) Conclusions of the Court

On Decision No 1 of the President of the Hearing

- 24. At the outset of the hearing, the Court asked the parties to make their submissions on the admissibility of the evidence submitted by the Appellant and relating to the dismantling of the Car, namely a video of the Car dismantling and witness statements, and also with regard to the waiver given by the Appellant in conjunction with Decision No. 1 issued by the President of the Hearing.
- 25. After hearing the submissions of both parties and after having carefully taken into consideration Decision No. 1 of the President of the Hearing, the waiver of the Appellant, the JDR and the technical regulations, the Court finds that Decision No. 1 was clear and that any further evidence relating to new checks on the Car, carried out after the seals were removed, cannot be brought forward before the Court.
- 26. The Court finds in particular that:
 - (i) No new arguments were brought forward by the parties on these issues;
 - (ii) The Appellant had provided a written waiver which it confirmed twice to the Court. This same waiver was a condition requested and imposed by a preliminary decision, which was not contested by the Appellant in any manner and which was not overturned;
 - (iii) The car was unsealed at the Appellant's request;
 - (iv) The FIA was not present during the Car dismantling;
 - (v) Acceptance of this evidence at this stage would be in clear contradiction to Decision No.1;
 - (vi) Thus the video and any testimony directly related to the Car dismantling is not admissible as evidence.

27. While the Appellant first reserved its rights after having received knowledge of the Decision of the President of the Hearing, it remains that the Appellant confirmed its waiver in its second letter to the Court, sent on 22 November 2019 after the President of the Hearing had stressed that unsealing the Car could not be subject to any condition.
28. Such letter reads as follows:
- “the Appellant waives the right to request the dismantling and inspection as an additional evidence in this procedure”.*
29. The Appellant also did not challenge this decision before the relevant courts and therefore Decision No. 1 became final and came into force. The reference to the possibility for the Court to review the case *de novo* is in that context irrelevant, as asking the Court to review Decision No. 1 would lead the Court to review its own decision and not the decision of another authority, that latter case being the grounds of the jurisdiction of the Court to review a case *de novo*.
30. In other words, the Appellant is now estopped from providing new evidence in relation with the dismantling and further inspection of the Car.
31. The Court stresses again that it was the Appellant’s choice to ask that the seals on the Car be removed. The Court also considers the fact that the FIA was not present during the dismantling and further inspection of the Car.
32. The evidence gathered by the Appellant on the basis of the dismantling of the Car is therefore inadmissible.
33. As a consequence and as confirmed by the Court at the outset of the hearing, the video produced by the Appellant with its Grounds for Appeal and which was shot during the dismantling of the Car, and any witness statement or other piece of evidence in direct relation with findings made during such dismantling, were not taken into consideration by the Court when it issued the present decision.

On the merits

34. As to the merits of the case, the Court first notes that the Appellant did not dispute before the Stewards that its Car was not compliant with Article 205 WEC TR.
35. Article 205 WEC TR reads as follows:

“No sprung part of the car is permitted below the flat bottom (see Article 902). At all times, it must be possible to slide under the car a block measuring 500 mm (width) x 100 mmm (length) x 50 mm (height). (...)”.



36. In its Grounds for Appeal and during the hearing, the Appellant submitted that that the wording of Article 205 WEC TR should be interpreted to mean that a Car does not have to meet the 50 mm minimum height criterion under every single part of the Car. The Appellant thus claims before the ICA that the Car was not in breach of Article 205 WEC TR.
37. The FIA, on its side, argues that the wording of Article 205 WEC TR clearly means that the block shall fit under any part of the Car.
38. The Court notes that Article 205 WEC TR applies to the Car's ground clearance (in French: "garde au sol"), namely "*the amount of clear space between the lowest part of a vehicle's frame and the ground*" (quoted from the Oxford dictionary).
39. Based on this very clear definition of the "ground clearance", there is no possible doubt that any part of the Car's flat bottom must meet the 50 mm minimum ground clearance.
40. The Court thus rejects the Appellant's interpretation of Article 205 WEC TR and confirms that the Car was not compliant with this article, as admitted by the Appellant itself before the Stewards.
41. Article 1.3.3 of the 2019-2020 Sporting Regulations applicable to the FIA World Endurance Championship (WEC SR) provides that "*Competitors must ensure that their cars satisfy the conditions of eligibility, compliance with the technical regulations, and safety throughout the Competition*". This duty is reinforced by Article 9.15.1 of the International Sporting Code (the "Code") which stipulates that "*the Competitor shall be 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 (...)*".
42. According to the ICA's constant jurisprudence, the obligation imposed on competitors to ensure that their cars comply with the relevant technical regulations is an absolute and objective one, and a breach of that obligation does not depend upon a fault being established (see notably ICA-2014-03 *Campos Racing*, ICA 3/2010, *RACB Prospeed ASBL*, dated 30 November 2010, no. 20).
43. The Court thus finds that the non-compliance of the Car with Article 205 WEC TR leads to an objective breach of Article 1.3.3 WEC SR.
44. Having found that the Appellant had breached Article 205 WEC TR and Article 1.3.3 WEC SR, the Court considers the sanction imposed by the Stewards, namely the disqualification of the Car.



45. When it comes to a breach of technical regulations, the Court's constant jurisprudence is that the breach of technical regulations must lead to disqualification, unless:
- (a) The competitor has not committed any fault, whether intentionally or through negligence, and
 - (b) The non-compliance of the car is the result of exceptional circumstances.
46. Exceptional circumstances are admitted only under very limited criteria, notably a clerical error or a mistake on the official homologation documents (ICA-2013-03, *G-Drive Racing*, dated 10 September 2013; ICA-2009-21, *FFSA Hexis Racing AMR*, dated 14 October 2009; ICA-2009-26, *Pekaracing NV*, dated 23 February 2010; ICA-2010-1, *DMSB Young Driver AMR*, dated 18 May 2010).
47. In case ICA-2013-03, *G-Drive Racing*, the ICA found further, under par. 32 and par. 35, that the breach of the technical regulations was caused by a modification of an important element of the car, namely the tank, which the Appellant could have prevented or at least identified by taking the necessary steps before the event.
48. In case ICA-2014-03, *Campos Racing*, the ICA noted under par. 45 that “*the Appellant failed to provide any evidence convincing the Court that the irregularity found on its car n°98 was due to the breaking of the car's flat bottom during the Competition, or any other involuntary incident which would have taken place during race n°1 or race n°2*”. Under the next paragraph of its decision, the court referred in particular to the statement of Mr Leal who indicated that that he had “*checked the solidity of the fixation of the front splitter of car n°98 during his inspection after race n°2 but did not observe anything indicating that it was dislodged or damaged from its regular mountings*”.
49. Lastly, in case ICA-2019-02, *Prema Powerteam*, dated 26 July 2019, the ICA mentioned under par. 39 that one of the conditions to admit the presence of exceptional circumstances was that “*the non-compliance of the car must be (...) of a nature such that the impossibility for the competitor to detect it was absolute and proven*”.
50. Considering the criteria set by the ICA in the quoted decisions, the Court notes that the Appellant claims that the Car was involved in three incidents during the Race, but the breach was caused by the third incident, which occurred

during lap 101 of the Race when the Appellant's Car "*crashed with its left front side into the rear right side car no. 62*".

51. This incident has been confirmed through a witness statement by the driver of Car No. 62, Mr Johnny Mowlem, whose evidence was produced as new evidence before the ICA.
52. The latter mentioned that "*on lap 101 of 125 laps, the car n. 86 eventually managed to drive down the inside of me into Turn 6 and to pass me. During the overtaking manoeuvre, as I turned into the right-hand corner with him already half a car length ahead of me, I was not able to see that the car n. 51 Ferrari of AF Corse also attempted to follow him through. As a consequence the right rear of my car got strongly in contact with the left front area of the car n. 51 of AF Corse, as we turned into the apex of 2nd gear right hand hairpin at Turn 6. The contact between my car and car n. 51 of AF Corse, even if strong, was correctly not reported to the race officials as it was a purely racing contact and not predominantly due to the fault of one of the drivers and therefore with no disciplinary consequences*".
53. This evidence was not contested in any manner, nor was the driver cross examined, and thus it has to be taken that both parties accept this testimony as a true fact, thus proving contact.
54. The Court also considers that the Appellant requested all video footage in relation to a number of cars, but unfortunately no video footage was available in relation to Car No. 62 – lap 101. This would have clearly further sustained the Appellant's argument and would have proved or excluded contact and the force of such contact, if any; however, this could not be provided, for reasons not attributable to either of the parties.
55. The Court finds this new evidence, dated 12 December 2019 and which was therefore not available to the Stewards, as important in the present case as it proves (1) that an incident did indeed occur on lap 101, (2) that it was strong, (3) that to the opinion of the witness, there was no fault or negligence by the Car's driver and (4) that the Stewards could not receive any information on it through the officials as this incident had not been reported.
56. The Court thus finds that this incident, which was a "purely racing contact" which did not lead to any sanction against the Car's driver, could be an "exceptional circumstance" leading to a mitigation of the sanction imposed on the Appellant if such incident proves to be the cause of the breach reported to the Stewards.

57. In that context, the Court refers to the witness statement dated 16 December 2019, provided by the Appellant and issued by Professor Peter Beaman, who is a Senior Research Investigator and Professor Emeritus of Experimental Aerodynamics at Imperial College, London. Prof. Beaman, who could not possibly be heard by the Stewards, has been involved in aerodynamics since 1965 and was asked by the Appellant to provide his expertise to evaluate the effects of the reduction in the Car's front left ride height of a few mm on the aerodynamic performance of the Car.
58. In order to draw his conclusions, Prof. Beaman proceeded with several investigations in relation to the Race, notably through various aerodynamic simulations, and came to the conclusion that *"from an aerodynamic perspective the lowering of the left-front side of the splitter did certainly not give the Car any competitive advantage. A further conclusion that can be drawn from the tests carried out is that, from an aerodynamic perspective, it would make no sense to have a Car's set-up that foresees a lower ground height on the left-frontside of the car"*.
59. Having considered the very clear conclusions of Prof. Beaman, the Court comes itself to the conclusion that the Appellant had no interest in causing the breach and that such breach could only be due to an involuntary cause.
60. The Court also considered the testimony of Mr Battistino Pregliasco, who confirmed that the normal configuration for the Car is 60 mm clearance from the ground, for both front and rear, and this to avoid damage to the Car's bottom. This was further confirmed by Mr Ferdinando Cannizzo, who stated that Ferrari recommends that ground clearance should not be less than 58 mm at the front and 62 mm at the rear, and that there should not be any difference between the left and right sides of the vehicle. A lower ground clearance would bring about a risk to the integrity of the Car, which could lead to breaking of the Car's bottom and engine sump. As regards the correspondence exchanged with the FIA, Mr Ferdinando Cannizzo argued that this related to a different matter, namely the external cables holding the front splitter and not the internal ones. Following the modifications which were accepted by the FIA, there were no further issues and that issue is thus unrelated to the present non-conformity. The possibility of the ballast creating the present non-conformity was also excluded by the witness. On the other hand it was not proven by the FIA.
61. The Court also considers that, factually and as evident from Exhibit 1 and Annex 23 presented by the Appellant and Appendix 4 presented by the FIA, the Appellant's Car was involved in contact with other cars during the Race. During the hearing, the Appellant explained that the blue mark on the front

left fender was brought about by a tyre mark where the blue sign on the tyre is the first to leave its mark. This hypothesis was not excluded by the FIA. This clearly shows that there was contact on the front left fender of the vehicle.

62. The Court also considers that in the present case the technical non-conformity is limited exclusively to the frontal part of the front left fender, and that the breach is millimetrical. Whilst acknowledging that a breach is always a breach, the Court also considers that the breach is millimetrical in nature and, moreover, that cars are driven in a competitive manner and so contact is inevitable.
63. The Court also notes that there is no official measurement by the FIA officials indicating exactly the breach related to the ground clearance found on the Appellant's Car, but simply that the cylindrical device used by FIA did not pass beneath this particular part of the Car. Ideally a clearer indication of measurement should be available, especially when the consequence of such a breach may bring about the sanction of disqualification.
64. Considering all the above and that the only cause which has been put forward and proved before the Court was the incident that occurred during lap 101 of the Race, the Court is comfortably satisfied that this incident was indeed the cause of the breach found on the Car at the end of the Race.
65. The hypothesis put forward by the FIA, namely that the breach was due to the weakness of the cables which were maintaining the splitter, cannot be taken into consideration by the Court, as this is not substantiated by an expert report or specific checks that should then have been made on the Car and which the FIA technical delegates refused to carry out at the scrutineering stage and which the FIA even contested when another such demand was made before this Court.
66. The Court then stresses that notwithstanding the principle that it is the Appellant's duty to ensure that the Car is compliant at all times, in the present case the breach is millimetrical and such that it could not be visually noticed during the Race, and that there was therefore no reason for the Appellant to call its Car in for repair.
67. Based on all the above, the Court finds that the Appellant has not committed any fault, whether intentionally or through negligence, and that in this particular case the non-compliance of the Car is the result of exceptional circumstances, namely a normal racing incident which caused a breach that could not reasonably be detected by the Appellant.



68. Given the particular circumstances of the case, the Court decides further that no penalty shall be imposed on the Appellant for breach of Article 205 WEC TR and Article 1.3.3 WEC SR.

COSTS

69. Considering all the above, the Court leaves it to the FIA to bear the costs in accordance with Article 11.2 JDR and the appeal deposit shall be returned to the Appellant.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the Appeal admissible;**
- 2. Set aside the Contested Decision;**
- 3. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 4. Leaves it to the FIA to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 5. Orders the return to AF Corse of its appeal deposit;**
- 6. Rejects all other and further conclusions.**

Paris, 12 February 2020

The President

Michael Grech