



**INTERNATIONAL COURT OF APPEAL (ICA)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by Messrs Pierre Furon and Maxime Furon-Castelain**

**against the**

**Decision CS/9/20 of 23 October 2020 issued by the *Corte Sportiva d'Appello* of the Automobile Club d'Italia (ACI-Sport) confirming the decision No. 227 of 4 October 2020 taken by the Stewards of the Event of Lonato (Italy) counting towards the 2020 FIA Karting Academy Trophy**

**Case ICA-2020-06**

**Hearing of 12 February 2021, Paris, held via videoconference**

**Decision of 5 March 2021**



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Laurent Anselmi (Monaco), who was designated President of the Hearing, Mr Andre Bezuidenhout (South Africa), Mr David Casement Q.C. (United Kingdom) and Mr Dieter Roskopf (Germany), held a hearing at the FIA headquarters in Paris and via videoconference on Friday 12 February 2021.

Ruling on the appeal brought by Messrs Pierre Furon (“the Competitor”) and Maxime Furon-Castelain (“the Driver”, together with the Competitor: “the Appellants”) against the decision CS/9/20 of 23 October 2020 issued by the *Corte Sportiva d’Appello* of the Automobile Club d’Italia-Sport (“the Decision”) confirming the decision No. 227 of 4 October 2020 taken by the Stewards of the Event of Lonato (Italy) counting towards the 2020 FIA Karting Academy Trophy (“the Stewards’ Decision”).

The following persons attended the hearing:

On behalf of the Appellants:

Mr Graham J. Wilson (Lawyer)  
Mrs Christelle Radocchia (Lawyer)  
Mr Maxime Furon-Castelain (Driver)  
Mr Pierre Furon (Competitor)  
Mr Didier Blot (Expert)

On behalf of the ACI-Sport:

Mr Vincenzo Capo (Lawyer)

On behalf of the FIA:

Mr Pierre Ketterer (Head of Department – Governance,  
Integrity & Regulatory Affairs, FIA)  
Mrs Alejandra Salmerón García (Senior Legal Counsel, FIA)

Also attending 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 parties filed written submissions and, at the hearing on 12 February 2021, set out oral arguments and addressed the questions asked by the Court. The Expert presented by the Appellants, Mr Didier Blot, was heard and the Parties and the Court were able to put to him any questions that they deemed useful. 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 and the hearing have been conducted, notably concerning the respect of the adversarial principle or the simultaneous translation.

## REMINDER OF THE FACTS

1. On the occasion of the third and final heat (“the Race”) of the 2020 FIA Karting Academy Trophy, which took place in Lonato (Italy) on 4 October 2020, Mr Martin Bean issued a “Judge of Fact’s Report” on the basis of a video camera’s recording (the so called “camera incident 70.28”), that Mr Martin Bean could watch from the race tower.

2. This report, bearing the number 189, reads, in its essential part, as follows:

*“MOTIF/REASON:*

*Kart 519 makes a move inside kart 506 at post exit 7 towards post 8, causing 506 to lose position and retire from race kart 519 continued.*

*lap 17*

*time 14.38*

*camera 70.28*

*booked”*

3. Following this report, the Stewards summoned the Driver of kart No. 519, who is 13 years old and was therefore accompanied by his mother, Mrs Géraldine Castelain, to a hearing during which part of the camera recording was shown to him. Neither the kart 506’s driver, Mr Jonathan Weywadt, nor Mr Martin Bean took part to this hearing.

4. The Stewards’ Decision was rendered against the Competitor on 4 October 2020 at 15h24. It reads in its relevant parts as follows:

*“ MOTIF/REASON:*

*The Stewards having received a report from the Race Control (Doc N° 189) requested by the Race Director, having examined (sic) this report, summoned and heard the Driver and Entrant concerned (Summon Doc N°223), have considered the following matter, determine the following:*

- *The Driver mentioned above could not avoid to make contact with Driver 506 and following that action forced the Driver 506 to retire.*
- *The Driver mentioned above failed to respect Art. 3.6.2.e of the 2020 Code of Driving Conduct on Karting Circuit.*
- *The Stewards impose this penalty according to Art. 2.24 of the 2020 CIK-FIA General Prescriptions and Art. 12.3 of the 2020 FIA International Sporting Code. The Competitor is reminded of his right to appeal in accordance with Article 15 of the 2020 FIA International Sporting Code."*

5. The Stewards' Decision was communicated to the Competitor on the same day at 15h30 through Mrs Castelain, who indicated on such decision that the Competitor intended to appeal. At 15h41, Mrs Castelain handed over a letter to the Stewards indicating in such letter that she confirmed appealing the Stewards' Decision on behalf of her son, Maxime Furon-Castelain.

6. The results of the Race were published at 17h47 through an official document numbered 31.3 which contained the following indication:

*"No.519 Furon-Castelain, Maxime: Disqualification for incorrect position at the start (art. 2.20 CIK-FIA 2020 General Prescriptions). According to Steward's Decision No.227."*

7. The document No. 31.3 was afterwards replaced by the Stewards with a new document numbered 31.4 which had exactly the same content as the document No. 31.3 save for the indication quoted above which was replaced with the following new indication :

*"Not classified*

*[...]*

*No.519 Furon-Castelain, Maxime: The Driver failed to respect Art. 3.6.2.e of the 2020 Code of Driving Conduct on Karting Circuit. According to Stewards' Decision No. 227."*

8. The Appellants lodged an appeal before the ACI-Sport on 8 October 2020.

9. On 23 October 2020, the *Corte Sportiva di Appello* of the ACI-Sport issued the appealed Decision.

10. The Decision reads, in its relevant parts, as follows:

*"(...) As a preliminary point, the appeal must be considered promptly filed and duly submitted to the correct court. Accordingly, neither of the abovementioned preliminary matters [namely, the various procedural arguments raised by the Appellants before the Appeal Court] affects the handling of the appeal. The witness statements requested by the complainants must be considered inadmissible, according to the Federal Prosecutor, since the alleged evidence is immaterial, the documents on file being sufficient. Therefore, the case may be decided on the merits*

*on the basis of the documents produced during the proceedings. Regarding the allegation that the contested decisions infringe the right to be heard, it should be noted that those decisions were taken legitimately and correctly by the sporting bodies against the appellants, since the right to be heard was upheld with the complainants, who were duly sent a report of the infringement. Furthermore, the error contained in the first report (31.3) does not vitiate the right to be heard, since it did not invalidate the subsequent documents. On the contrary, the right to be heard was effectively upheld, as it is apparent from the documents on file. Moreover, the plea of infringement of the European Convention on Human Rights is well founded, since the complaint was submitted promptly and correctly to the Court, and the appellants have been able to put forward all their grounds of defence, formulating their arguments extensively both in writing and orally.*

*As for the matter of law concerning the lack of evidence available to the stewards in order to carry out a proper assessment of the race dynamics, the evidence is instead found to be comprehensive, since although the video used as the basis for the decisions is incomplete, it does illustrate the dynamics of the challenge, even in the light of the still images submitted by the appellant, which are consistent with the video insofar as it proves that the driver of kart 519 (the appellant) takes a very wide racing line through the bend and, despite having the option of exiting the bend early and without approaching the driver of kart 506, does in fact go very near the other driver. Consequently, the reaction of kart 506, as emphasised in the complainant's defence, in no way contributed to the incident or at least to the impact that resulted in kart 506 leaving the track. It is further noted that the video, unlike the still images, gives a full view of the track and the manoeuvre, both before and after the bend, and adequately supports the stewards' decisions.*

*The groundlessness of the appeal, moreover, absolves the board of having to assess the inadmissibility of the appeal on the grounds that the appellant did not notify the other party, the driver of kart 506, of the appeal.*

*The groundlessness thus subsumes any inadmissibility of the complaint.*

**FOR THESE REASONS**

*The Corte Sportiva di Appello dismisses the appeal, finding it unfounded, and accordingly orders the forfeiture of the contribution paid for legal expenses. (...)"*

**PROCEDURE AND REQUESTS OF THE PARTIES**

11. The Appellants notified their appeal to the ICA on 9 November 2020.
12. On 6 October 2020, the Appellant had paid an appeal deposit of 6,000 euros.
13. At the request of the Court, the other competitors in the 2020 FIA Karting Academy Trophy have been informed on 16 November 2020 by ACI-Sport, as ASN responsible for this trophy, that the present case was pending before the Court and that they

could submit a request for being heard as third-party, should they wish to do so. None of them did, in particular the driver of Kart No. 506, Mr Jonathan Weywadt.

14. In their Grounds for Appeal, received by the Court on 17 December 2020 in French and on 21 December 2020 in English, the Appellants ask the Court:

**“ On the merits**

*to reverse the Decision CS09/20 taken by the Corte d'Appello Sportiva on 23/10/2020;*

- *to pronounce the annulment of Decision no. 227 and*
- *to pronounce the annulment of the first classification in Document 31.3 official*
- *to pronounce the annulment of the second classification in Document 31.4 official*
- *to pronounce the annulment of the disqualification section,*
- *therefore that the classification of the race in Lonato on 04/10/2020 be amended to reinstate Mr Furon-Castelain to 5<sup>th</sup> position in the classification of the final of the FIA Karting Academy Trophy 2020,*
- *therefore that the classification of the FIA Karting Academy Trophy 2020 Championship be amended to reinstate Mr Furon-Castelain to 3<sup>rd</sup> position in this championship.*

**In the alternative**

*If in the unlikely event that the driver were considered to have breached article 3.6.2.e of the Code of Conduct, we request that the disqualification penalty pronounced in Decision no. 227 be reduced and thus replaced by a less severe penalty such as a warning or fine and that, therefore, the classification of the race in Lonato on 04/10/2020 be amended to reinstate Mr Furon-Castelain to position 5 and that the classification of the FIA Karting Academy Trophy 2020 be amended to reinstate Mr Furon-Castelain to position 3.*

**And in any event** *the appellant party requests that:*

- *it be granted its wish to testify and to arrange for testimony to be given by all the witnesses useful to its case and that it be allowed to develop its grounds and evidence more fully during the course of an examination and hearing.*
- *it be allowed to provide all useful evidence for a clarification of the facts,*
- *all the witnesses useful for its case be heard,*



- *the security paid in Italy and in France be returned to it,*
- *and that no costs be incurred by the appellant party.*

15. In its Grounds in Response, received by the Court on 13 January 2021, the ACI-Sport concludes that:

*“the consequences of these irregularities are:*

*The inadmissibility of the appeal,*

*In any case the appeal must be rejected as unfounded in fact and law.”*

16. In its Written Observations, received by the Court on 18 January 2021 (English version) and on 22 January 2021 (French version), the FIA invites the Court to assess the fact in this case after hearing the parties concerned, and to rule on the arguments put forward by the Appellants.

17. During the course of the proceedings and prior to the hearing, the President of the Hearing issued two preliminary Decisions concerning :

- (i) the production of evidence and the calendar of proceedings (Decision No. 1 of the President of the Hearing, dated 9 December 2020);
- (ii) the date of the hearing (Decision No. 2 of the President of the Hearing, dated 7 January 2021).

## **ADMISSIBILITY OF THE APPEAL BEFORE THE COURT**

18. The Court notes that the Appellants brought their appeal in accordance with the provisions of the FIA Judicial and Disciplinary Rules (“JDR”).

19. The Court also considers that it is competent to hear this appeal.

20. Therefore, the Court deems the appeal admissible, which is not contested by the FIA which expressly recognises the admissibility of the appeal in its Written Observations.

21. As to the ACI-Sport, it did not bring any argument, neither in its Grounds in Response nor at the hearing against the admissibility of the appeal, notwithstanding the conclusion on the inadmissibility of the Appeal taken in its Grounds in Response which shall thus be rejected here.

## ON THE SUBSTANCE

### a) *Arguments of the parties*

22. The Appellants put forward in essence the following grounds in support of their appeal:

- (i) The essential rights of the Appellants have been violated both during the proceeding before the Stewards and during the proceeding before the *Corte Sportiva di Appello*, so that the Decision of the latter and the Stewards' Decision should be declared null and void;
- (ii) Mr Martin Bean's report which served as a basis to the Stewards' Decision was inadmissible as Mr Martin Bean exercised no official position during the Race and had therefore no competence to issue a "Judge of Fact's report";
- (iii) The Driver did not commit a breach of Article 3.6.2.e of the 2020 Code of Driving Conduct on Karting Circuit ("the Code of Conduct") as:
  - It was the driver of kart 506 who took the bend very wide and then closed on the Driver who had finished overtaking him by way of a perfectly acceptable manoeuvre;
  - It was thus the driver of kart 506 who caused the contact and not the Driver;
  - By doing so the driver of kart 506 is solely responsible for the consequential damage caused to his own kart, which forced him to retire from the Race;
  - The driver of kart 506 or his team did not file any complaint against the Appellant following this incident;
- (iv) Would the Court find that the Driver committed a breach of the Code of Conduct, the penalty of disqualification imposed on the Competitor was in any event disproportionate as:
  - The Driver had no intention to provoke the incident;
  - The Driver never changed his path to draw closer to and collide with kart 506;
  - The damage caused to the karts is not a major one;
  - During his young career, the Driver always had a pristine attitude.

23. The ACI-Sport, for its part, contends in essence as follows:

- (i) Mr Martin Bean had been nominated by the Stewards in accordance with the applicable regulations through a Steward's Bulletin, which the ACI-Sport produced with its Grounds in Response;



- (ii) The alleged procedural irregularities put forward by the Appellants had no material impact in the proceedings before the Stewards and the *Corte Sportiva di Appello*, and the Appellants were not prevented from validly and completely exercising their rights of defence due to those alleged irregularities;
- (iii) The Driver did not maintain his trajectory and went beyond his “allowed space”, with the consequence that he caused a damaged to kart 506 which lead to the latter having to retire from the Race;
- (iv) The way the Driver was driving has to be qualified as “dangerous driving”;
- (v) Unless a decision of the Stewards is clearly illogical, the national court of appeal has no reason to challenge what has been decided by the Stewards.

24. The FIA, for its part, contends in essence as follows:

- (i) The Stewards may amend the Supplementary Regulations on the basis of article 11.9.3.b of the International Sporting Code (“the Code”), which they validly did when they nominated Mr Martin Bean by issuing the Stewards’ Bulletin No. 1;
- (ii) By virtue of the devolutive effect of the appeal before the Appeal Court and before the present Court, all alleged procedural flaws put forward by the Appellants were cured;
- (iii) In any event, those alleged procedural irregularities had no impact on the actual capacity of the Appellants to use their rights of defence, as they had all the necessary information to be able to lodge their appeal before the Appeal Court and submit their arguments to the present Court.

**b) Conclusions of the Court**

25. Having carefully examined the various observations made by the Parties to the procedure, and having considered the submissions made by them and the expert brought by the Appellant at the hearing, the Court rules as follows.

*On the question of the procedural irregularities*

26. The Court notes first that the Appellants do not claim that the various irregularities that they put forward before the Court prevented them from effectively exercising their rights.



27. The Court stresses further that according to article 10.9 of the FIA Judicial and Disciplinary Rules (“the JDR”), the Court in the present case has *“all the decision-making powers of the authority that took the contested decision”*.
28. This full power to review the case, which is undisputed by the Parties, is confirmed in the ICA constant jurisprudence on this topic (see notably ICA-2013-05, ICA-2014-03 or ICA-2014-04).
29. As a consequence, the Court finds that, in any event, those alleged procedural irregularities (incomplete summons, violation of the right to be heard, wrong information on the appeal procedure, etc.) have been cured by the Appeal before the ICA so that the submissions made by the Appellant on this issue must be rejected.
30. However, the Court wishes to underline that whatever the scope of their jurisdiction, the Stewards or the national appeal courts must duly respect the fundamental procedural rights of the parties concerned. The competent authorities shall notably make sure that the formalities required by the relevant regulations are complied with and that the information provided to the parties is correct. The right to be heard shall be given particular attention.
31. One should of course expect this rigorous attitude from any authority which has to decide on the fate of a litigant, in particular when the latter is a minor.
32. The Court further recalls that procedural irregularities can have under certain circumstances such an impact on the case that they can simply not be cured by the devolutive effect of the appeal. This has been confirmed in various decisions issued by the ICA (see notably ICA-2015-03, par. 55 and 56 with reference to ICA-2004-08, or ICA-2016-05, par. 23).
33. As a consequence, it is paramount that all procedural steps imposed by the relevant regulations and the general principles of procedural law be properly applied at each level of the proceeding in order to ensure a sound administration of justice, within the framework of a fair and impartial legal system, which is essential for athletes subject to the applicable regulations to adhere to them.

*On the question of the competence of Mr Martin Bean*

34. The ACI-Sport and the FIA submitted to the Court the Bulletin No. 1 issued by Stewards, where the latter nominated Mr Martin Bean as “Judge of Fact” in accordance with the powers at their disposal under article 11.9.3.b of the Code.
35. Mr Martin Bean having been validly nominated, the submissions raised by the Appellants on the validity of his report which served as a basis for the Stewards’ Decision must thus be rejected.

*On the question of the breach of Article 3.6.2.e of the Code of Conduct*

36. Both the *Corte Sportiva d'Appello's* Decision and the Stewards' Decision are based on a breach of article 3.6.2.e of the Code of Conduct, which provides for the following:
- "e) Contacts / collisions (during the race, deceleration lap included): sanctions may be imposed on a Driver who pushes another Competitor."*
37. Before going into the analysis of the incident which took place during the Race, the Court stresses first that the Stewards assess the situation and take their decision immediately after the incident, which grants them a strong if not the best position to interpret the incident to form the basis of their decision.
38. As reflected in the ICA constant jurisprudence, although the national courts of appeal and, ultimately, the ICA can review the case *de novo* based on the devolutive effect of the appeals, the ICA considers that the national courts of appeal and, ultimately, the ICA must in principle exercise restraint when it comes to the pure assessment of a race incident and of the sanction imposed on a competitor by the Stewards (see ICA 2015-06, par. 39).
39. However, in the present case, the ICA notes that there is no evidence before this Court that either Mr Martin Bean, the Judge of Fact who issued the report on the incident or the Stewards have seen the incident with their own eyes. It is also undisputed that Mr Martin Bean issued his report from the race tower on the basis of a camera recording which did only provide incomplete information on the incident. The ACI-Sport could also not confirm whether the Stewards could view other video sequences of the incident which could supplement their knowledge of the said incident. The Driver mentioned in his appeal and confirmed at the hearing before the Court that he could only see during his meeting with the Stewards sequences which ended just before the contact with kart No. 506. This statement from the Driver was not disputed by the ACI-Sport or by the FIA.
40. It is also undisputed that the Stewards did not call the Judge of Fact and the driver of kart No. 506 at the meeting with the Driver and that they did not inspect the karts No. 506 and No. 519.
41. Eventually, the *Corte Sportiva d'Appello* admits in the appealed Decision that *"the video used as the basis for the decisions is incomplete"* but considers it to be reliable for the alleged reason that *"it does illustrate the dynamics of the challenge, even in the light of the still images submitted by the appellant, which are consistent with the video insofar as it proves that the driver of kart 519 (the appellant) takes a very wide racing line through the bend and, despite having the option of exiting the bend early and without approaching the driver of kart 506, does in fact go very near the other driver."*

42. The *Corte Sportiva d'Appello* concludes that the Driver committed a breach because “the reaction of kart 506, as emphasised in the complainants’ defence, in no way contributed to the incident or at least to the impact that resulted in kart 506 leaving the track.”
43. It is thus clear from the foregoing that the Stewards’ Decision was only based on an incomplete video and that no further evidentiary measure was taken by the Stewards. They did not hear Jonathan Weywadt, the driver of the kart No. 506, and nothing in the file shows that they heard the Judge of Fact who had issued the report on the incident. As neither Mr. Martin Bean, nor Mr Jonathan Weywadt took part in the meeting with the Stewards, the Driver and the Competitor could of course not discuss the incident with them. Eventually the Stewards did not inspect the kart in order to get some further evidence on the circumstances of the incident.
44. On the other hand, the ICA could review the video and benefit from detailed explanations given by the expert Mr Didier Blot. It also took into consideration the damages caused to the two karts during the incident.
45. Based on all the above, the Court concludes that it is, in the present case, actually in a better position to assess the incident than the Stewards, who should have taken additional evidentiary measures after the Race, such as confronting the two drivers, hearing the Judge of Fact or inspecting the two karts in order to get a more complete and precise understanding of the circumstances of the incident instead of simply relying on a video which was again incomplete as mentioned by the *Corte Sportiva d'Appello* in its Decision.
46. Having carefully reviewed the sequences of the video of the incident, the Court came first to the conclusion, that there is no evidence that the Driver did “push” his competitor out of the track.
47. Indeed, firstly, the kart No. 506 does not appear to have left the track but its driver had to stop because its direction was broken.
48. Secondly, the video sequences show that it is in fact the kart No. 506 which hit the Driver’s kart No. 519, so that it is not kart No. 519 which pushed kart No. 506 but the latter which pushed the former.
49. This is not only apparent in the video but this is also evidenced by the damages caused to the two karts, as the kart No. 506 was damaged at the front left, whereas the Driver’s kart No. 519 was damaged at the rear right.
50. The video shows that Mr Jonathan Weywadt who had been overtaken by the Driver, initiated a manoeuvre in order to try and under-cut the trajectory of kart No. 519 and possibly overtake in his turn his competitor. This manoeuvre failed as he hit kart No. 519 and broke the direction of his own kart.



51. The Court thus concludes that this was a pure race incident between two competitors which were doing their best to reach the best possible position at the end of the Race without breaching in any way the Code of Conduct and certainly in any case no intention to do so.
52. It is worth noting that the driver of kart No. 506 did not file any complaint after the Race about the Driver's manoeuvre, which the expert Didier Blot qualified as "perfectly correct" stressing that it was actually Mr Weywadt who should have either hit the brakes to let the kart No. 519, that had clearly overtaken him, pass through or stay on the outside, as it had enough space to do so, instead of trying to prick inside the hairpin, therefore causing the incident.
53. Based on the foregoing, the Court decides that the Driver did not commit any breach of the Code of Conduct so that the appeal must be upheld. The Decision of the *Corte Sportiva d'Appello* of ACI-Sport as well as, consequently, the Stewards' Decision shall thus be set aside.
54. As to the Appellants' requests to annul the official classifications reflected in the documents Nos. 31.3 and 31.4, the Court notes that the document No. 31.3 was replaced by the document No. 31.4 and that the competent authorities shall be invited to draw the sporting consequences of the Court's ruling, notably on the official classification issued in document No. 31.4. There is therefore no further examination to be made by the Court with respect to those requests made by the Appellants, the one on document No. 31.3 being without object and the one on document No. 31.4 being dealt with the squashing of the Decision and of the Stewards' Decision.

## **COSTS**

55. Considering that the Appeal is fully upheld, the Court leaves it to the ACI-Sport to bear all the costs, in accordance with Article 11.2 of the JDR.



**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the appeal admissible;**
- 2. Uphold the appeal and quashes the decision CS 9/20 of 23 October 2020 taken by the *Corte Sportiva d'Appello* of the ACI-Sport;**
- 3. Sets aside the decision of the Stewards No. 227 of 4 October 2020 taken by the Stewards of the Event of Lonato (Italy) counting towards the 2020 FIA Karting Academy Trophy;**
- 4. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 5. Leaves it to the ACI-Sport to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 6. Orders the return of the appeal deposit in full to the Appellant;**
- 7. Rejects all other and further conclusions.**

**Paris, 5 March 2021**

**The President**

**Laurent Anselmi**