



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by the Automobile Club d'Italia (ACI)

against

Decision No. 9-22 taken by the ACI Sporting Court of Appeal which upheld the appeal of Prema Racing Srl and Driver Dino Beganovic against Decision No. 22 dated 5 June 2022 of the Stewards of the round of Le Castellet (France) counting towards the 2022 Alpine Formula Regional European Championship

Case ICA-2022-06

Hearing of 30 November 2022

Decision of 13 December 2022



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Laurent Anselmi (Monaco), who was designated President, Mr Jean Gay (Switzerland), Mr Michael Grech (Malta) and Mr Jean Luisi (France), held a hearing at the Fédération Internationale de l’Automobile, 8 place de la Concorde, 75008 Paris, on Wednesday, 30 November 2022.

Prior to the hearing, the Court had received and considered submissions and attachments thereto made by the ACI, Prema Racing Srl and Dino Beganovic, and by the FIA.

The following persons attended the hearing:

On behalf of the Appellant, ACI:

Mr Vincenzo Capo, Lawyer

Mr Roberto De Felice, Appointed inspector

On behalf of Prema Racing Srl and Dino Beganovic:

Mr René Rosin, Team Principal (by videoconference)

Mr Dmitry Belousov, Team Manager

Mr Jos Claes, Dallara Spa engineer

Mr Andrea Fioravanti, Lawyer

Mr Arthur Dethomas, Lawyer

On behalf of the FIA:

Ms Alejandra Salmerón García, Senior Legal Counsel

Ms Prisca Mutesi, Senior Legal Counsel

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 30 November 2022, set out oral arguments and addressed the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous French and English 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 have been conducted, notably regarding the respect of the adversarial principle or the simultaneous translation.

I. REMINDER OF THE FACTS

1. On the occasion of the Race 2 held in Le Castellet on the Circuit Paul Ricard on 5 June 2022 (the “Race”) within the framework of Round 4 of the 2022 Alpine Formula Regional European Championship (the “Championship”), a post-race technical check was performed, amongst others, on car No. 18 on Competitor Prema Racing Srl (the “Competitor”), driven by Dino Beganovic (the “Driver”).
2. Following this check, the Technical Delegates issued Technical Report No. 4 (the “Report”), which determined the non-conformity of car No. 18 with the Championship Technical Regulations (the “TR”).
3. The Technical Delegates particularly stated in their Report that *“The tightening torque of hub flange (part number 2412009) measured on the front left upright was found to be 240 Nm. The minimum value must be 500 Nm (page no. 100 T318 of the technical manual). On the upright there is also the locking flange (part number 2412011) to avoid it unscrewing. This fitting is in breach of Art. 275.2.7.1 of Appendix J FIA 2022. The hub flange is classified as type 1. These parts must be supplied by the manufacturer and used exactly as supplied”*.
4. Having analysed all the documents in their possession, and heard the Driver and the Competitor, the Stewards issued Decision No. 22 (the “Stewards’ Decision”), by means of which they disqualified the Driver and the Competitor from the Race, deciding that they had failed to respect Article 19.14 of the Championship Sporting Regulations (the “SR”) and Article 275.2.7.1 of Appendix J of the International Sporting Code (the “Code”).
5. The Competitor and the Driver then appealed to the ACI Sporting Court of Appeal (the “SCA”), which has jurisdiction in this matter, which upheld their appeal and annulled the penalty imposed by the Stewards by means of a decision rendered on 9 September 2022 and notified by email to the ACI, the Competitor and the Driver on 30 September 2022 (the “SCA Decision”).



6. The email dated 30 September 2022, to which the SCA Decision containing the reasons and operative part is attached, was signed by Mr Pantano, on behalf of the ACI motor sport management, and was addressed to the lawyers of the Competitor and the Driver, as well as Messrs Sessa and Patti of the ACI.
7. On 6 October 2022, the SCA Decision was published on the ACI's website under No. 9/22.

II. PROCEDURE BEFORE THE COURT

8. On 10 October 2022, the Appellant transmitted to the Court its Notification of appeal and filed its Grounds for Appeal on 27 October 2022, which was notified on the same day to the Competitor and the FIA by the Court.
9. On 7 November 2022, the Competitor requested that the Court issue a preliminary decision of inadmissibility of the appeal on the grounds that it was filed outside the time limit set out in Article 10.3.1 b) of the FIA Judicial and Disciplinary Rules.
10. Considering that the Competitor only addressed its Request to the Court on 7 November 2022, that is 28 days after being made aware of the appeal and 25 days after having received the Court convening notice, and considering the state of progress of the proceedings, the Court dismissed the Competitor's request (the "Procedural Decision no. 1") on 9 November 2022.
11. On 11 November 2022, the FIA, on the one hand, and the Competitor and Driver, on the other hand, respectively filed their Written observations and Grounds in response.

III. THE HEARING

12. At the beginning of the hearing, the Court invited the Parties to present, firstly, their arguments in relation to the compliance or non-compliance of the time limit for appealing set out in Article 10.3.1 b) JDR. The Court then invited the Parties to present their substantive arguments.
13. The Parties mainly confirmed the content of their Grounds and Written observations. The experts called by both the Appellant and Competitor each gave their opinion on whether the 500 Nm value indicated in the technical manual was prescriptive or not. The Appellant's expert also explained that during the checks carried out using a measuring device with standard calibration, a tolerance of 5% was permitted, whilst the Competitor's expert explained that the pressure of 500 Nm could by no means remain constant, nor be maintained during and after a race.



14. The Appellant's expert also indicated that only one wheel out of the four of the two other cars that were subject to a check related to the 500 Nm value were checked, whilst all four wheels of the Competitor's car were checked, due to the fact that the first wheel that was measured was 240 Nm. According to the Appellant's expert, the other three wheels were in compliance with the applicable regulations as the torque measured was above 500 Nm.

IV. REQUESTS OF THE PARTIES

15. The Appellant asks the Court to dismiss the Decision of the SCA and to confirm Decision No. 22 of the Stewards as well as the penalty of disqualification imposed on the Competitor and the Driver.
16. The Competitor and the Driver requested, principally, that the appeal be declared inadmissible and, in the alternative, that no penalty or sanction be imposed on them or, failing that, that a warning or fine be issued instead of a disqualification.
17. In its Written observations, the FIA asked the Court to determine the facts and rule on the arguments raised by the Parties in these proceedings.

V. ON THE ADMISSIBILITY OF THE APPEAL BEFORE THE COURT

18. As a preliminary remark, the Court considers that the appeal meets the conditions of form set out in Article 10.1.1 a) JDR and that the appeal deposit was paid, which is not being contested.
19. Therefore, the only remaining open question is the respect of the time limit set out in Article 10.3.1 b) JDR raised by the Competitor and the Driver for deciding on the admissibility of the appeal.

a) Arguments of the Parties on the respect by the Appellant of the time limit for appealing

20. The Competitor and the Driver argued that the SCA Decision had been validly notified to the Appellant on Friday, 30 September 2022. Contending that the time limit for appealing set out in Article 10.3.1 b) JDR must be calculated based on calendar days and not working days, the Competitor and the Driver claim that the time limit for appealing expired on Friday, 7 October 2022.

21.



22. Therefore, as the Notification of appeal was only submitted to the Court on Monday, 10 October 2022, the Competitor and the Driver argue that the Notification of appeal was made after the deadline for appealing, meaning that the Court must, in their opinion, rule that the ACI's appeal was late and therefore is inadmissible.
23. On that topic, the FIA explains that upon reviewing paragraph 15 of the Practice Directions of the Court (the "Practice Directions"), the time limit for appealing set out Article 10.3.1 b) JDR is to be calculated based on calendar days, not working days.
24. The Appellant replied to these arguments, stating that it had only truly been served with the SCA Decision when it discovered on 7 October 2022 that the Decision had been published on its own website on 6 October 2022.
25. Furthermore, the SCA Decision had been recorded on the ACI Sporting Court of Appeal's registry under an incorrect case number, making it impossible, in the ACI's opinion, to identify this Decision, except by opening the registered document.
26. Regarding the notification of 30 September 2022, the ACI stated that the email sent by Mr Pantano on behalf of the ACI motor sport management, was not addressed to the correct individuals within the ACI and the organisers of the Alpine Formula Regional European Championship, meaning that this notification cannot be validly imposed on the ACI.
27. Lastly, the Appellant states in its Grounds for appeal that the time limit for appealing before the Court is calculated based on working days "*as is the case in the ordinary legal system*", according to the Appellant.

b) Conclusions of the Court

28. First and foremost, the Court recalls on the one hand the provisions of Article 10.3.1 of the JDR:

"Any notification of an appeal by an FIA Member, a person who is the subject of a decision of the IT or any other person who has a legal interest to act must be transmitted to the GSC within the following time limits:

(...)

b) Appeals against a decision of a judicial body of an ASN or an ACN: the appeal must be notified within 7 days following notification of the decision of the national judicial body."

29. The Court recalls on the other hand the provisions of Article 10.3.3 of the JDR:
- “Any notification of appeal [...] made after the deadline shall result in the inadmissibility of the appeal.”*
30. The Court then recalls the provisions of Article 10.3.4 of the JDR:
- “The time limit for appealing against a decision does not begin to run until it has been fully notified, with its reasons and its operative part.”*
31. Lastly, the Court recalls the provisions of paragraph 15 of the ICA Practice Directions:
- “Unless specifically provided for in the Rules or these Practice Directions, the deadlines refer to calendar days, not working days, and start to run on the first day following the day on which the relevant event occurs.”*
32. As the time limit set out in Article 10.3.1 b) JDR does not refer to working days, the Court finds that the deadline of seven days set out in this article must indeed be calculated on the basis of calendar days.
33. On the topic of the *dies a quo* of the time limit, the Court finds that the SCA Decision had been notified by an email dated 30 September 2022, signed by a representative of the ACI, Mr Pantano, and addressed to two other representatives of the Appellant, Messrs Patti and Sessa, as well as the Driver and Competitor.
34. It also finds that the SCA Decision attached to the aforementioned email was indeed complete in that it contained the reasons and the operative part within the meaning of Article 10.3.4 of the JDR, which is not being contested.
35. Lastly, the signature of the email sent indicates that the email in question *“contains information from the Automobile Club d’Italia”*.
36. In fact, the Appellant is not disputing that this email was indeed sent to it and received on 30 September 2022, but it argues that the recipients were not competent in the matter. At the hearing, the Appellant had clarified that the email should have been sent to the individuals in charge of international competitions, or even its President.
37. The Court finds that firstly, the email originated from an entity within the ACI. Secondly, it was addressed to at least two individuals who were part of the ACI, namely Messrs Patti and Sessa.
38. In view of the above, the Court decides that the Appellant cannot claim that an alleged internal error had occurred, whether proven or not, in order for the notification of 30 September 2022 to not be taken into consideration, as far as it is concerned, as the starting point for the deadline of seven days set out in Article 10.3.1 b) JDR.



39. Article 10.3.1 b) of the JDR does make reference to “*notification of the decision of the national judicial body*”. The decision was handed down on 30 September 2022 to Messrs Patti and Sessa of the ACI’s Circuit Speed Commission (Commissione Velocità in Circuito). As the ACI has notified the SCA Decision to itself, it had to know to whom precisely send the said Decision and cannot take advantage of its own possible error.
40. As was the case for the Driver or the Competitor, the Appellant’s time limit for appealing against the Decision of its national Sporting Court of Appeal of seven calendar days started the day after the notification of this decision, meaning Saturday, 1st October 2022. The time limit in question therefore expired at midnight on Friday, 7 October 2022.
41. As the Secretary General of the Courts received the Notification of appeal on 10 October 2022, the appeal was late and therefore must be declared inadmissible, meaning that it is not up to the Court to address the merits of the case.

c) COSTS

42. Considering the outcome of the proceedings, the Court leaves it to the Appellant to bear all the costs, in accordance with Article 11.2 of the JDR.
43. The Court will retain the deposit that it received until a final calculation of costs has been made.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal inadmissible;**
- 2. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 3. Leaves it to the Automobile Club d'Italia (ACI) to bear all the costs, in accordance with Article 11.2 of the JDR;**
- 4. Rejects all other and further conclusions.**

Paris, 13 December 2022

The President

Laurent Anselmi