



**INTERNATIONAL COURT OF APPEAL**

**of the**

**FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeals lodged by the Automobile Competition Committee for the United States (ACCUS) on behalf of its licence-holder Dragon Racing**

**against**

**Decisions Nos 5 and 10 dated 3 July 2016 of the Stewards of the Competition of London (GBR) counting towards the 2015–2016 FIA Formula E Championship**

**Case ICA-2016-04**

**Hearing of 16 September 2016 in Paris**



The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprising Mr Harry Duijm (Netherlands), who was designated President, Ms Waltraud Wunsch (Germany), Mr Riccardo La Cognata (Italy) and Mr Patrick Raedersdorf (Switzerland), met in Paris on Friday, 16 September 2016 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeals lodged by the Automobile Competition Committee for the United States (ACCUS) on behalf of its licence-holder Dragon Racing (“Dragon Racing” or the “Appellant”) against Decisions Nos 5 and 10 dated 3 July 2016 of the Stewards of the Competition of London (GBR) (the “Competition”) counting towards the 2015–2016 FIA Formula E Championship (the “Championship”) by which a drive-through penalty converted into a 50-second time penalty was imposed on car No. 25 of the competitor DS Virgin Racing Formula E Team (“DS Virgin”) (“Decision No. 5”) and a one-second time penalty was imposed on driver Jean-Eric Vergne (“Decision No. 10”); Decisions Nos 5 and 10 being hereinafter referred to jointly as the “Decisions”).

The following persons attended the hearing:

On behalf of the Appellant:

Mr Nicolas Mauduit (Engineering Director)  
Mr Thomas De La Mare (QC)  
Mr Mark Gay (Solicitor)  
Mr Martin Ochs (Solicitor)

On behalf of the FIA:

Mr Pierre Ketterer (FIA Head of Regulatory, Governance  
& Legal Corporate Affairs)  
Ms Delphine Lavanchy (Legal Coordinator)

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 their written submissions and, at the hearing of 16 September 2016, presented their oral arguments and answered the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. No objection to the competence or the composition of the Court, to any element of the fairness of the proceedings or of the hearing or to any element of the simultaneous translation was raised by either party.



## REMINDER OF THE FACTS

1. On 3 July 2016 during the Competition, the Stewards found, on the basis of a report submitted by the Technical Delegate of the Competition, that the driver Jean-Eric Vergne (the “Driver”), registered in car No. 25 of DS Virgin had breached the 2015–2016 Sporting Regulations of the FIA Formula E Championship (the “Regulations”) by exceeding the maximum amount of energy (28 kWh) that can be delivered to the Motor Generator Unit (MGU) by the rechargeable energy storage system (RESS).
2. In their Decision No. 5, the Stewards imposed a drive-through penalty on car No. 25 of DS Virgin. As the penalty was imposed after the end of the race, it was converted into a time penalty of 50 seconds in the same Decision No. 5, for the purpose of issuing the final classification.
3. Within the hour following the publication of Decision No. 5, no intention of appeal was notified in writing by any competitor to the Stewards.
4. During the same Competition, the Stewards found, this time on the basis of a report issued by the Race Director of the Competition, that the Driver had also breached Article 30.12 of the Regulations by emerging from the pit lane in a potentially dangerous manner.
5. Consequently, the Stewards issued Decision No. 10, imposing a time penalty of one second on the Driver.
6. Dragon Racing notified its intention to appeal against Decision No. 10 within one hour following its publication and subsequently confirmed its appeal before the Court.

## PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

7. On 6 July 2016, ACCUS, acting on behalf of the Appellant, lodged two appeals, one against Decision No. 5 and one against Decision No. 10 (the “Appeals”).
8. In its submissions, filed on 4 August 2016, the Appellant seeks the following orders:
  - “5.1.1. *Decision No. 5, (...) taken against Car 25, JE Vergne of DS Virgin Racing imposing a 1 second time penalty for unsafe release in the pit lane should be annulled for illegality on the basis that:*
    - (i) *it is a disproportionate sanction; and*
    - (ii) *it was reached in breach of the Stewards duty to exercise their powers fairly, impartially and with reasonable care and skill.*



- 5.1.2. *Decision No. 10 (...) taken against Car 25, JE Vergne of DS Virgin Racing imposing a Drive Through Penalty (converted to a 50 second time penalty) for exceeding the maximum power be annulled for illegality on the basis that:*
- (i) it is a disproportionate sanction; and*
  - (iii) it was reached in breach of the Stewards duty to exercise their powers fairly, impartially and with reasonable care and skill.*
- 5.1.3. *That the Panel impose such a proportionate sanction for the breaches of the Regulations as it sees fit.”*
9. The FIA in its grounds in response received by the Court on 7 September 2016, invites the Court:
- “6.1 Primarily, to declare inadmissible the appeal[s] brought by the Competitor against the Stewards’ decisions in application of Article 10.1.1 a) of the JDR, Article 12.2.4 of the ISC and the Championship Sporting Regulations;*
  - 6.2 secondarily, to dismiss the Competitor’s appeals and confirm the Decisions of the Stewards in their entirety, in application of Article 10.9 of the JDR; and*
  - 6.3 to leave it to the Appellant to bear the costs in accordance with Article 11.2 of the JDR.”*
10. DS Virgin requested to be heard as a third party on 15 July 2016 and concluded in its written submissions received by the Court on 8 September 2016 that *“there is no jurisdiction to entertain this appeal, and, even if there were, the appeal is misconceived and Virgin respectfully requests that it be dismissed.”*



## ADMISSIBILITY OF THE APPEAL

### a) *Arguments of the Parties*

11. The Appellant contends that the Court has jurisdiction in the present case on the basis of Article 9.1 of the Judicial and Disciplinary Rules (JDR).
12. The Appellant further cites an extract from ICA Case No. 24/2009 where the ICA found that it was not prevented from “*reviewing the legality of penalties*”. In the Appellant’s view, the ICA is obliged, in its capacity as a body exercising supervisory jurisdiction over the actions of the Stewards, to consider not merely whether the sanctions imposed were those which could be legally imposed by the Stewards but also whether those sanctions were in all of the relevant circumstances proportionate. It further refers to “*a well established principle, common to all systems of administrative justice, and particularly in the context of international sports law, that any decisions imposed by any body having disciplinary functions must be a proportionate one.*”
13. The Appellant added at the hearing that the jurisdiction of the Court should be admitted in order to avoid “perverse” decisions being taken by the Stewards.
14. The FIA refers in its grounds in response to the requirements provided under Article 10.1.1 d) of the FIA JDR and maintains that the two appeals did not meet those requirements.
15. The FIA first explains that neither of the two notifications of appeal received by the Court on 6 July 2016, from ACCUS, and on 7 July 2016, from the Appellant, include proof that the intention of appeal had been given in writing to the Stewards within one hour of their publication. Nothing in the notifications of appeal mentions either the time of publication of the Decisions nor the time of notification to the Stewards of the intention of appeal.
16. Specifically concerning Decision No. 5, the FIA considers that the document that comprises the Appellant’s intention of appeal entitled “Appeal Against Stewards Decision” contains no intention to appeal Decision No. 5 as it refers to one appeal and one decision only, namely that of Decision No. 10.
17. Nevertheless, regarding Decision No. 5, the FIA maintains that, in any event, the intention of appeal was not validly given within one hour of its publication, as Decision No. 5 was published at 5.50 p.m. and the document “Appeal Against Stewards Decision”, attached to the grounds in response of the FIA, shows that the Stewards actually received this document at 8.07 p.m., therefore two hours and seventeen minutes after the publication of Decision No. 5.



18. The Appellant confirmed at the hearing that it did not object to these submissions by the FIA regarding Decision No. 5.
19. The FIA then refers to the International Sporting Code (ISC) and the Regulations and claims that the Decisions are not appealable.
20. First, the FIA claims that pursuant to Article 12.2.4 ISC, penalties of driving through or stopping in pit lanes cannot be subject to an appeal.
21. The FIA then stresses that according to Article 16.3 of the Regulations, not only drive-through penalties, but also time penalties, cannot be subject to an appeal.
22. The FIA contends that the two appeals are therefore inadmissible.
23. The FIA then addresses the submissions made by the Appellant in relation to ICA Case 24/2009, cited by the Appellant in order to support the admissibility of the Appeals.
24. The FIA maintains that the aforementioned case simply confirms the competence of the ICA as far as the legality of a drive-through penalty is concerned. By contrast, the ICA also confirmed in ICA Case 24/2009 that it was, however, not competent to review the merits of drive-through penalties which had been imposed in accordance with the ISC and the relevant sporting regulations. According to the FIA, the ICA therefore confirmed that it was not competent in terms of the issue of the proportionality of the sanction.
25. As a consequence, the FIA contends that in the present case, the Stewards had the authority to enforce the ISC and to settle any matter which might arise during the Competition and could decide what penalty to enforce in the event of a breach of the regulations, pursuant to Articles 11.9.1 and 11.9.2 ISC.
26. Time penalties and drive-through penalties are penalties which can be imposed by the Stewards pursuant to Article 12.3 ISC.
27. With regard to Decision No. 5, Article 37.9 of the Regulations expressly mentions the drive-through penalty as a minimum penalty with reference to an excessive amount of energy delivered to the MGU by the RESS.
28. Then, concerning Decision No. 10, an “incident”, which the FIA claims to have occurred in the present case – as defined in Articles 16 and 30.12 of the Regulations – can lead to a time penalty being imposed by the Stewards.
29. The FIA thus draws the conclusion that the penalties imposed in the Decisions have valid legal grounds since (i) the Stewards were expressly authorised by the ISC and the Regulations to impose these penalties and (ii) they were handed down in compliance with the requirements set out in the ISC and the Regulations.



30. Based on the foregoing, the FIA finds that the principle of legality was not breached and that the Appeals must therefore be declared inadmissible.
31. In its written observations, DS Virgin comes to the same conclusion, also based on Articles 12.2.4 and 12.3.2 ISC and on Articles 16 and 17 of the Regulations. DS Virgin notably claims that ICA Case No. 24/2009 actually supports its position as the ICA confirmed in that case that “*it had no jurisdiction to review the merits of the penalty*”.
32. According to DS Virgin, it is not disputed in the present case that the Stewards were entitled under the ISC and the Regulations to impose a time penalty for a breach of Articles 30.12 and 37.9 of the Regulations as well as of Article 7.6 of the FIA Formula E Technical Regulations. The Appellant asks “only” that the ICA review the merits of the penalties, which is, in DS Virgin’s view, outside the jurisdictional scope of the Court.

*b) Conclusions of the Court*

33. After having carefully reviewed all the Parties’ submissions on the admissibility of the Appeals, the Court went through the different articles of the various applicable regulations cited by the Parties.

*i) On the irregularity of the Appeals’ notification*

34. The Court first took good note that the Appellant did not object to the submissions of the FIA with respect to the irregularity of the notification of appeal against Decision No.5. The irregularity of this notification is therefore undisputed.
35. As to the appeal against Decision No. 10, the Court notes that Article 10.1.1.d) of the JDR provides that “*the notification of an appeal must include:*

(...)

- d) where the appeal is one against a decision of the Stewards, proof that the intention of appeal was given in writing to the Stewards within one hour of the publication of the decision.*

*Any irregularity in the notification will result in the inadmissibility of the appeal.”*

36. The Court went through the notification of the Appeals and all its appendices and did not find the proof required by Article 10.1.1 d) JDR. The Court also noted that the Appellant did not put forward any exceptional circumstances which could explain the incompleteness of the notification.
37. As in other decisions of the ICA (see in particular ICA Cases 2015-01, 2015-02 and 2016-02) the Court therefore finds that the notification of both Appeals was irregular, which results in their inadmissibility.

ii) On the scope of jurisdiction of the ICA

38. Notwithstanding its conclusion on the completeness of the Appeals and given the importance of the issue related to the scope of the ICA's jurisdiction debated among the Parties, the Court decided to address that issue as well.

39. Article 12.2.4 ISC and Article 16.3 of the Regulations reads as follows in their relevant parts:

Article 12.2.4 ISC

*“Penalties of driving through or stopping in pit lanes, together with certain penalties specified in FIA Championship regulations where this is expressly stated, are not susceptible to appeal.”*

Article 16.3 of the Regulations

*“The stewards may impose any one of the penalties below on any driver involved in an Incident:*

(...)

*e) a time penalty.*

(...)

*If any of the six penalties above [red: the penalties listed under lit. a) to f), therefore including therefore lit. e) a time penalty] are imposed they shall not be subject to appeal.”*

40. The Court notes that it is undisputed that the Stewards were competent to impose a penalty of driving through (Decision No. 5) or a time penalty (Decision No. 10) and that the Decisions were thus based on a valid legal basis.

41. Indeed the Appellant limits its submissions to the issue of the proportionality of the Decisions. At no point does the Appellant claim that the Stewards breached the principle of legality. This is not only reflected in the Appellant's submissions but also in its requests for relief.

42. Based on the clear wording of Article 12.2.4 ISC and in full consistency with ICA Case 24/2009, to which the Parties refer and which the Court addresses below, the Court therefore finds that both Decisions are not appealable.

iii) On ICA Case 24/2009 and the alleged general principle of sports law

43. The Court first stresses that it is not bound by precedents, especially when it comes to a legal issue which has been dealt with only once by the ICA.





44. Notwithstanding the foregoing, the Court notes that in paragraph 16 of Decision 24/2009, the ICA states that “*while Article 152 ISC, fifth paragraph [red: now Article 12.2.4 ISC] excludes any review of the merits of appeals against drive through penalties imposed in accordance with the ISA and any Supplementary Regulations, it does not prevent the Court from reviewing the legality of such penalties. In all cases the Court retains its supervisory function of ensuring that the rule of law is respected and that when drive through penalties are applied, they are applied only as authorised in the ISC and any Supplementary Regulations.*”
45. No submission against the legality of the appealed decision having been put forward by the Parties in that case, the ICA further states under paragraph 19 of that decision, that “*the Court dismisses the Appellant’s arguments with respect to the admissibility and declares the appeal inadmissible on the grounds that no plea has been raised regarding the legality of having imposed that penalty and the Court has no jurisdiction to review the merits of the penalty as Article 152, fifth paragraph excludes such a review by the Court.*” [red: underline added.]
46. As in ICA Case 24/2009, there is no dispute in the present case as to whether principle of legality was respected.
47. The Appellant refers only to the principle of proportionality. It therefore cannot rely on ICA Case 24/2009, which, on the contrary, fully supports the Court’s position on the inadmissibility of the Appeals.
48. Regarding the Appellant’s submissions on the alleged duty of the ICA as a supervisory authority to systematically review the “proportionality” or, to cite the Appellant’s words at the hearing, the “non-perversity” of the Stewards’ decisions, the Court first stresses that the ICA is not an administrative court but an internal body of an International Sporting Federation governed by French Civil law.
49. The Court further notes that the doctrine cited by the Appellant does not contend that a Sporting Federation must establish an internal appeals body, which would have jurisdiction on any penalty imposed by a “first instance body”, which in the present case is the Stewards.
50. The FIA can freely decide how to organise its internal processes, which are clearly regulated by the ISC and the Regulations.
51. The Parties and, in addition, the Court, are bound by those regulations. The Court cannot therefore decide unilaterally that it has jurisdiction. Otherwise the Court would simply be in breach of the ISC and the Regulations.
52. Given the nature of the penalties imposed by the Stewards in their Decisions Nos 5 and 10, the Court thus confirms that such Decisions were final, any internal appeal within the FIA being therefore excluded.



## **ON THE SUBSTANCE**

53. In view of the foregoing, it follows that there is no need to examine the merits of the case, namely the factual and legal arguments raised by the Appellant, the FIA and the third party, DS Virgin.

## **COSTS**

54. Considering that the Appeals were declared inadmissible, the Court orders the Appellant to bear all the costs in accordance with Article 11.2 of the JDR. The third party deposit paid by DS Virgin shall be returned to it.

## **ON THESE GROUNDS,**

### **THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the appeals inadmissible;**
- 2. Orders the competent sporting authority to draw the consequences of the present decision;**
- 3. Orders Dragon Racing to pay all the costs in accordance with Article 11.2 of the Judicial and Disciplinary Rules;**
- 4. Orders that the third party deposit paid by DS Virgin be returned to it.**

**Paris, 16 September 2016**

**Harry Duijm, President**