



**INTERNATIONAL COURT OF APPEAL (ICA)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by Pravia Autocompetición**

**against**

**Decision No. 1 dated 23 May 2019, taken by the Stewards of the Rally De Asturias Historic counting towards the 2019 FIA European Historic Sporting Rally Championship**

**Case ICA-2019-01**

**Hearing of Tuesday, 16 July 2019 in Paris**



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Ms Waltraud Wünsch (Germany), who was designated President, Mr Marek Malecki (Poland), Mr Gérard Martin (Belgium) and Mr Tony Scott Andrews (United Kingdom) met in Paris on Tuesday, 16 July 2019 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by Pravia Autocompetición (“Pravia” or the “Competitor”) against Decision No. 1 issued on 23 May 2019 by the Stewards of the Rally de Asturias Histórico (the “Asturias Rally”) counting towards the 2019 FIA European Historic Sporting Rally Championship (the “Championship”), under which the Stewards decided not to allow the car No. 4 of the Competitor to start in the Asturias Rally for a breach of Articles 4.3 and 10.1.2 of the Supplementary Regulations for the FIA European Historic Sporting Rally Championship 11 Rally de Asturias Histórico (the “Supplementary Regulations” or the “SR”).

The following persons attended the hearing:

on behalf of Pravia:

Mr Toni Garcia (Attorney at law)

on behalf of the FIA:

Mr Pierre Ketterer (Head of Regulatory, Governance and Legal Corporate Affairs)

Mr Barry Lysaght (Senior Legal Counsel)

Mr Louis Quiniou (Technical Expert)

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 parties filed their written submissions and, at the hearing of 16 July 2019, 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 translation. The Appellant filed at the outset of the hearing a copy of an email exchange dated 27 and 28 June 2019. The Court did not admit this new evidence as it was filed after the exchange of the grounds for appeal and the response although it was available before the deadline given for the exchange of the grounds for appeal and the response. The evidence produced did also refer to another HTP, namely the new HTP issued for the car of interest here with HTP No. E-5231, and not to the HTP

No. E-5212 which is the object of the present proceedings. The Appellant thus failed to prove that the late filing of this new evidence was due to new or exceptional circumstances, as provided under article 10.6 last paragraph of the FIA Judicial and Disciplinary Rules (JDR).

None of the Parties raised any objection, in relation either to the composition of the Panel or to the manner in which the proceedings have been conducted, notably the simultaneous translation.

## REMINDER OF THE FACTS

1. During the Vltava Rallye held on 26 and 27 April 2019 (the “Vltava Rallye”) within the framework of the Championship, the stewards received a report from the FIA Eligibility Delegate, Mr. John Hopwood on 26 April 2019 regarding the pre-event scrutineering and the FIA Historical Technical Passport (the “HTP”) of car No. 3.
2. Mr. Hopwood reported the car No. 3 of the Competitor for the following reasons:

*“HTP issued February 2019, dampers on HTP non adjustable, car now has double adjustable Reiger dampers. Dash (on car and on HTP) does not conform to the homologation specifications, bracing tube across ROPS, bolted through floor to rear subframe not permitted.”*

3. After having heard the Competitor, the stewards of the Vltava Rallye issued a decision No. 1 which held as follows:
  - a. *“Car does not conform the HTP according to article 4.3.1 of Appendix K”* to the International Sporting Code (the “ISC”);
  - b. The Competitor’s *“crew is not authorised to start the rally”*; and
  - c. *“HTP [recte: a copy of the HTP] is sent to Spanish ASN for further inspection that the car and/or the HTP is corrected”* in accordance with Article 4.3.2 of Appendix K.
4. The Competitor, that had confirmed receipt of this decision, did not appeal it.
5. On 27 April 2019, Mr. Hopwood issued an additional report No. 6.4, stating that the HTP of the Competitor, bearing the number E-5212, had been returned to the FIA for the following reason:

*“Dash changed from that on HTP and not conforming to homologation form. Dampers now remote reservoir double adjustable Reiger, non adjustable non*

*remote reservoir type on HTP. Tube across ROPS main hoop and bolted through floor to rear subframe mounts not homologated or permitted in App J or K. HTP issued on 1/2/2019 so very recent. On further examination, dash photo is taken from HTP E 5238.”*

6. On 9 May 2019, Mr. Louis Quiniou of the FIA sent an email to Mr. Fernando Alvarez, Technical Director of the RFEDA, with a copy to Mr. Vincent Caro, Mr. Ralf Pettersson and Mr. Arnaud Crépin confirming in this email that the HTP No. E-5212 was still in possession of the FIA, only a scanned copy of it having been sent to the RFEDA.
7. Between 9 and 23 May 2019, the FIA entered into email correspondence with the RFEDA regarding the technical corrective modifications which were needed. The Appellant was copied on this correspondence from 15 to 23 May 2019.
8. On the occasion of the Asturias Rally held in Spain on 23, 24 and 25 May 2019 within the framework of the Championship, the Stewards received a report from the FIA Eligibility Delegate, Mr. Ralf Pettersson, on 23 May 2019 regarding the pre-event scrutineering (the “Asturias Report”).
9. In such report, Mr. Pettersson stated that car No. 4 of the Competitor, a Ford Sierra Cosworth, was reported to the Stewards for the following reason:  
  
*“One month ago this car was excluded in Rally Vltava, because the car was not according to its HTP. The HTP was sent to FIA/Geneve (sic), and from there the drivers and the Spanish Federation received information about what must be corrected. All these instructions have still not been corrected, and because of this I asked FIA/Geneve (sic) what to do. The answer was that the car has no paper (HTP).”*
10. Having heard the Competitor, the Stewards issued the Decision No. 1 (the “Decision”) stating that the car was not allowed to start the Asturias Rally on the ground that the Competitor had failed to present the HTP to the FIA Eligibility Delegate at scrutineering and thus breached Articles 4.3 and 10.1.2 of the Supplementary Regulations.
11. Articles 4.3 and 10.1.2 SR read as follows:  
  
*“At scrutineering, the Competitor must present the FIA Historic Technical Passport (“HTP”) to the FIA eligibility delegate who may keep it until the end of the Competition.” (art. 4.3 SR)*



*“any team taking part in the Rally, must arrive at scrutineering with a representative of the crew or with its full crew, and car in accordance with the published timetable. Any car reporting to the scrutineering area outside the prescribed time limits will not be allowed to start, except in the case of “force majeure” duly recognised as such by the stewards. The crew must present the FIA HTP to the FIA eligibility delegate who may keep it until the end of the event. If this is not submitted, the car may not start.” (art. 10.1.2 SR)*

## PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

12. The Decision was notified to Pravia on 23 May 2019, at 20:53 and Pravia notified its intention to appeal against the Decision at 21:30, i.e. within the hour following the notification of the Decision.
13. Pravia then filed its appeal before the Court on 27 May 2019, at 16:54, i.e. within 96 hours of the notification of its intention to appeal against the Decision. The document filed is dated 24 May 2019.
14. The ICA received on 13 June 2019, notification of the Written Observations from the Real Federación Española de Automovilismo (the “RFEDA”), acting as the Competitor’s parent ASN in the present case, whereas Pravia informed the ICA on the same day that its Declaration of appeal filed on 27 May 2019 had to be considered as its full grounds for appeal (the “Grounds for appeal”).
15. In its Grounds for appeal, Pravia filed the following requests for relief from the Court :
  - “1) *The present appeal is admissible;*
  - 2) *Decision No.1 of the panel of the Stewards appealed is declared null and void;*
  - 3) *That as a result of the above, it is agreed to return this bond appellant to this competitor [red: Pravia’s requests for relief include a print screen of the payment of the appeal deposit].*
16. The FIA, in its Grounds in response received by the Court on 28 June 2019, asked the Court to:

*“further to Article 10.9 of the Judicial and Disciplinary Rules of the FIA, dismiss the Appellant’s appeal, and confirm the Asturias Decision in its entirety, both*



*as to breach of Articles 4.3 and 10.1.2 of the Supplementary Regulations and as to penalty for that breach; and*

*Order the Appellant to pay the ICA costs of the appeal referenced in Article 11.2 of the Judicial and Disciplinary Rules of the FIA.”*

17. The RFEDA, in its Written observations received by the Court on 12 June 2019 did not file any request for relief.

## **ADMISSIBILITY**

18. The Court acknowledges that the Appellant filed its Appeal in conformity with the FIA Judicial and Disciplinary Rules (“JDR”).
19. The Court also finds that it has jurisdiction in the matter.
20. Therefore, the Court declares the appeal admissible, which is undisputed.

## **ON THE SUBSTANCE**

### *a) Submissions of the parties*

21. The Appellant contends in essence that the Decision is based on only one ground, namely that the Appellant could not present the FIA HTP. As the stewards of the Vltava Rallye, which took place before the Asturias Rally, sent the HTP to the FIA, the Appellant could not be sanctioned for not being able to produce a document held by the FIA at the moment of the pre-event scrutineering. The Appellant argues therefore that *“requiring a contestant to possess a document that is in the power of the complainant is as much as imposing an absurd sanction that limits a team to the exercise of its legitimate right to compete.”*
22. The RFEDA stresses as well that the stewards of the Vltava Rallye sent the HTP to the FIA and that the RFEDA never received it. The RFEDA mentions as well that *“in the previous technical scrutineering of the “Rally de Asturias Histórico”, which can be read in the relevant documents, the legality of any technical element of the No. 4 car is not verified or questioned, [but] only the presentation of an HTP, which was still in the possession of the FIA at the moment.”*

23. The FIA contends in essence that:

- (i) The HTP is a mandatory document required for participation in FIA Historic competitions. The failure by a competitor to present a valid compliant HTP can result in disqualification as outlined in Articles 4.1.1, 4.2.1, 4.2.3, 4.2.4, 4.3.1 and 4.3.2 of Appendix K to the ISC.
- (ii) The Appellant accepted the terms of the decision taken by the stewards of the Vltava Rallye, which ruled that the Appellant's car and the HTP related to it did not conform to the applicable technical requirements. This justified that the HTP be sent to the FIA, as provided under Article 4.3.2 of Appendix K.
- (iii) According to Article 4.3.1 of Appendix K, it was the Appellant's responsibility to modify its car in order to make it compliant with the applicable technical requirements. Despite the efforts by the FIA to assist the Appellant in resolving the technical problems, the latter did not manage to meet those requirements. In accordance with Appendix K, the FIA therefore withheld the HTP, which is the FIA's property.
- (iv) Based on the foregoing, the FIA stresses that the Appellant's failure to provide the HTP is the consequence of its own failure to ensure that its car be compliant with the relevant technical requirements. The Decision must therefore be upheld.
- (v) According to articles 4.3.4 and 4.3.6 of Appendix K, the FIA may cancel an HTP or suspend it. If the FIA decides that an HTP is not valid, it has to approve any new HTP before the latter being issued. According to Article 1.3.1 of the ISC, the Appellant is deemed to have submitted itself with the rules and the sporting authority decisions and to the consequences resulting from them.
- (vi) Contrary to the Appellant's statements in its Ground for appeal and to what the RFEDA mentions in its Written Observations, the Stewards did indeed refer to the Asturias Report in their Decision and this report clearly stated (i) that the Appellant's car was not allowed to participate due to its non conformity with its HTP and (ii) that the Appellant had been informed about the necessary corrective measures to be taken. Eventually, the Asturias Report clearly mentions that the technical non-conformities were persistent. The Stewards did clearly state in their Decision that the Appellant could not present the HTP "*due to technical discrepancies still under discussion*".

- (vii) Furthermore, the Appellant did sign the Vltava decision which listed the technical non-conformities of its car and of its HTP so that the Appellant was fully aware of its car's technical non-conformities but failed to resolve them despite the FIA's endeavour to assist it.

b) *Conclusions of the Court*

24. Having carefully considered the various submissions made by the parties, the Court notes first that both the SR and the Appendix K provide that the Appellant had to present a valid HTP in order to be allowed to take part to the Asturias Rally.
25. The Appellant and the RFEDA put forward that this formal requirement could not be met because the FIA had kept the HTP whereas the FIA explains that it had the right to keep the HTP as long as the non-conformities of the Appellant's car and HTP had not been corrected.
26. The Court finds first that the stewards of the Vltava Rallye did rightly send the original HTP to the FIA, which is undisputed. The Appellant did indeed not appeal the decision taken by the stewards, which listed the various non conformities found with the Appellant's car and HTP No. E-5212.
27. The Court then notes that the FIA sent various emails to the Appellant, trying to help the Appellant to resolve the various non-conformities listed in the Vltava decision. However, the Appellant did not manage to correct those non-conformities in time before the Asturias Rally, which is also undisputed.
28. Article 4.2.4 of Appendix K provides that *"it is the Competitor's responsibility to prove, if requested, that the car complies with the approved specification, as entered on the HTP"* and Article 4.3.1 provides that *"should a car on inspection be found not to conform to its HTP or homologation form, and the irregularity is outside the scope of the "red dot" procedure (Article 4.4), it is the Competitor's responsibility to ensure that the car is modified in order to conform."*
29. Article 4.3.4 lit. c of Appendix K provides that *" the HTP may be cancelled in the following circumstances: (...) By the FIA which may suspend or declare invalid any HTP, informing the issuing ASN of its decision and in case of withdrawal publishing the decision in the FIA Official Bulletin."*
30. Following those provisions of Appendix K and considering that the Appellant was unable to resolve the non-conformities found with its car, the Court finds



that the FIA had the right to retain the HTP of the Appellant's car until the latter was found compliant with the technical requirements.

31. As the Appellant did not manage to make its car compliant, the Court decides that the Appellant bears the whole responsibility for not being able to show the HTP at the outset of the Asturias Rallye.
32. Contrary to the Appellant's and the RFEDA's statements during the procedure, the original HTP could not be produced by the Appellant not simply because it was in the hands of the FIA but because of the Appellant's car still not being compliant with the applicable technical requirements. Would the Appellant have corrected the non-conformities listed in the Vltava decision, the FIA would have returned the HTP to the Appellant or issued a new HTP, as appropriate, and the latter's car could have competed regularly in the Asturias Rallye.
33. The Appellant itself confirmed at the hearing that the FIA was legitimately withholding the HTP given the irregularities found in its car and the HTP at the outset of the Vltava Rallye. It also admitted during this same hearing that it was its duty to solve the issues related to these irregularities. It is however its view that because of the lack of reference in the Decision of any irregularity, it should not have been prevented from participating to the Asturias Rallye.
34. The Court stresses first that the HTP is not just a formal requirement but is mandatory to control the eligibility and conformity of the car and ensure its correct classification in a competition, as stipulated in article 4.2.1 of Appendix K, which provides that *"the HTP has only two purposes; firstly for the use of technical and eligibility officials at Competitions and secondly for the use of Competition organisers in both classification and class structure for their Competitions."* It is therefore crucial for any competitor to hold a valid HTP and to produce it before any competition, so that the officials can decide on its admissibility to the Competition. The Appellant does not actually seem to dispute the importance of the HTP as it merely claims that the reasoning of the Decision did not include any element on the non-conformity of the car.
35. The Court rejects this submission for two reasons.
36. Firstly, the Stewards referred clearly to the irregularities found before the Vltava Rallye, mentioning in the Decision that *"the Stewards received a report from the FIA Eligibility Delegate (document 4.1), summoned team representative of team Pravia Autocompetition (summons No 1). The competitor represented by Candido Carrera stated that HTP was withdrawn by FIA in a previous championship event due to technical irregularities found at*



*that time. The competitor tried to amend those before the Rally de Asturias event but due to technical discrepancies still under discussion FIA has not issued a HTP and hence the competitor has not been able to present it at the event scrutineering.”*

37. Secondly, the HTP was not sent back to the Appellant because the irregularities found during the Vltava Rallye had not been corrected, which is undisputed.
38. There was therefore no need for the Stewards to refer in the operative part of the Decision to the reasons why the Appellant could not produce the HTP.
39. In other words, the reference in the Decision to the breach of articles 4.3 and 10.1.2 of the SR does not mean that this breach is due to the fact that the FIA had kept the HTP but simply that the Appellant was not capable of producing it.
40. Given the fact that the Appellant itself accepts that the FIA had legitimate reasons for not returning the HTP and further does not dispute that the absence of an HTP would prevent a competitor from taking part in the Asturias Rally, the Court rejects the Appeal and upholds the Decision.

#### **COSTS**

41. Considering that the Appeal is rejected, the Court leaves it to the Appellant to bear the costs in accordance with Article 11.2 JDR.



**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the Appeal admissible;**
- 2. Upholds Decision No. 1 of the Stewards of the Rally De Asturias Historic counting towards the 2019 FIA European Historic Sporting Rally Championship;**
- 3. Confirms that Pravia Autocompetición's car No. 4 was not allowed to participate in the Rally De Asturias Historic counting towards the 2019 FIA European Historic Sporting Rally Championship;**
- 4. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 5. Leaves it to Pravia Autocompetición to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 6. Rejects all other and further conclusions.**

**Paris, 25 July 2019**

**The President**

**Waltraud Wunsch**