



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by Prema Powerteam s.r.l.

against

**Decision No. CS 2/19 of the Italian National Court of Appeal rejecting the appeal
against Decision No. 3, dated 13 April 2019, of the Stewards of the Le Castellet
Competition counting towards the 2019 Formula Regional European
Championship**

Case ICA 2019-02

Hearing of Wednesday 17 July 2019 in Paris

Decision of 26 July 2019

*The operative part of the present decision, without the grounds, was previously
communicated to the parties on 17 July 2019.*



The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), composed of Mr Philippe Narmino (Monaco), who was designated President of the Hearing, Mr Javier Bone Matheu (Spain), Mr Thierry Julliard (Switzerland) and Mr Jean-Christophe Leroy (France), met in Paris on Wednesday 17 July 2019 at the Fédération Internationale de l’Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by Prema Powerteam s.r.l. (“Prema” or the “Appellant”) against Decision No. CS 2/19 of the Italian National Court of Appeal (the “Decision”) rejecting the appeal against Decision No. 3, dated 13 April 2019, of the Stewards of the Le Castellet Competition counting towards the 2019 Formula Regional European Championship (the “Stewards’ Decision”).

The following persons attended the hearing:

On behalf of Prema:

Mr René Rosin (Team Principal)
Mr Andrea Fioraventi (Legal Counsel)

On behalf of ACI:

Mr Vincenzo Capo (Legal Counsel)

On behalf of the FIA:

Mr Pierre Ketterer (Head of Regulatory, Governance
and Legal Corporate Affairs)
Ms Delphine Lavanchy (Legal Counsel)
Mr Barry Lysaght (Senior Legal Counsel)

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 17 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. 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 Le Castellet Competition, the first competition counting towards the new international series “Formula Regional European Championship” (“FREC”), after Race 2, which was won by Car No. 64 entered by Prema, the Stewards found, based on a report by the Technical Delegate of the Automobile Club d’Italia (“ACI”) for the FREC, Mr Roberto De Felice, that the car was not in conformity with the relevant sporting and technical regulations in that a front damper had been mounted on the rear suspension of the car.
2. During the hearing convened by the Stewards, the representatives of Prema explained that the erroneous mounting of the damper was attributable exclusively to the supplier of the vehicle, the company Tatuus Racing Spa (the “Manufacturer”), the sole supplier of the chassis of the cars admitted to the FREC, in accordance with the sporting regulations of the 2019 Formula Regional European Championship (the “Sporting Regulations” or “SR”).
3. At the end of the hearing, the Stewards declared that Prema’s car was in breach of Article 3.1 SR and of Article 2.7.1 of the technical regulations of the 2019 Formula Regional European Championship (the “Technical Regulations” or “TR”) and therefore issued Decision No. 3 disqualifying Prema’s Car No. 64, driven by Olli Caldwell, from the results of Race 2 of the Le Castellet Competition counting towards the 2019 Formula Regional European Championship (the “Competition”).
4. Prema immediately notified its intention to appeal against the Stewards’ Decision and subsequently confirmed the appeal before the Italian National Court of Appeal (the “NCA”).
5. Prema was heard by the NCA on 17 May 2019. Following the hearing, the NCA upheld the Stewards’ Decision by handing down its own decision CS 2/19, notified to Prema on 13 June 2019 (the “Decision of the NCA”).

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

6. On 18 June 2019, Prema then sent an email to the ACI, which is its Parent ASN, informing it of its intention to appeal against the Decision, and lodged an appeal against the Decision of the NCA before the FIA International Court of Appeal (the “Court”) on 19 June 2019 in a letter sent by email and by registered letter.

7. In its grounds for appeal, received by the Court on 1 July 2019 (English version) and 4 July 2019 (French version), the Appellant invited the Court essentially to order that:

- “(a) the Stewards Decision is set aside;*
- (b) no penalty is imposed on the Prema’s Car; and*
- (c) the Prema’s Car is included in the first position of the final classification of the Race.*

In the alternative, (...)

- (a) the Stewards Decision is set aside;*
- (b) a penalty not higher than the penalty requested by the Italian ASN before the Italian Court of Appeal, i.e. a fine of EUR 5.000, is imposed on Prema’s Car; and*
- (c) the Prema’s Car is included in the first position of the final classification of the Race.”*

8. In its grounds in response, received by the Court on 10 July 2019 (English and French versions), the ACI invites the Court to declare *“the inadmissibility of the appeal, and that, in any case the appeal must be rejected as unfounded in fact and law.”*

9. The FIA, in its written observations received by the Court on 11 July 2019 (English version) and 15 July 2019 (French version), invites the Court to *“assess the facts in this case, after hearing the parties concerned, and to rule on the arguments put forward by the Appellant.”*

10. On 9 July 2019, the President of the Court asked the Appellant to provide any evidence likely to prove that the car was delivered in the condition noted by the Stewards. In response to this request, on 11 July 2019 the Appellant produced a letter from the Manufacturer Tatuus, dated 10 July 2019.

ADMISSIBILITY OF THE APPEAL BEFORE THE ICA

11. The Court acknowledges that the Appellant filed its Appeal in conformity with the FIA Judicial and Disciplinary Rules (“JDR”).
12. The Court also finds that it has jurisdiction in the matter.

13. Therefore, the Court declares the appeal admissible, which is undisputed, the ACI having submitted no grounds in support of its conclusion of the inadmissibility of the Appeal and having not confirmed this conclusion at the hearing.

ON THE SUBSTANCE

a) *Submissions of the parties*

14. The Appellant puts forward two grounds in support of its Appeal:

- (i) The sanction of disqualification taken by the Stewards and confirmed by the NCA is disproportionate and should be set aside or, in the alternative, replaced with a less severe penalty.

In support of the above, the Appellant explains that it used the damper exactly as supplied by the Manufacturer and *“that it did not intervene in any way, since the part had to be used “exactly as supplied” and since repair works by the competitor are not permitted.”*

The Appellant thus considers that it had to rely on the competence of the Manufacturer and that it had no opportunity to appreciate, discover and possibly resolve the error committed by the Manufacturer, who was thus solely responsible for it.

The Appellant explains, for one thing, that it did not have any additional dampers and so was technically unable to replace the dampers with which it had been supplied. It adds, for another, that it was not even authorised to carry out any intervention on the damper pursuant to the Technical Regulations.

The Appellant stresses that the noted irregularity did not entail any competitive advantage but on the contrary had a negative impact, creating problems in the car's set-up.

In conclusion on its first grounds of appeal, the Appellant therefore contends that it should not be sanctioned insofar as:

“The subjective element of intentionality is not present;

The non-conformity is attributable to an error not attributable to the competitor, but to the manufacturer / supplier of the non-compliant component (in casu also mandatorily imposed by the applicable Sports Regulations); and

The technical non-conformity does not provide any competitive advantage.”

- (ii) The Appellant claims that the NCA ruled *ultra petita* in going beyond the reliefs sought by the parties involved in the relevant procedure, thereby breaching Article 112 of the Italian Civil Procedure Code.

In support of the above, the Appellant explains that the Judicial Rules of the ACI refer to the general principles of the Italian Civil Procedure Code (“ICPC”) for all matters that are not regulated in those Rules. According to the Appellant, insofar as Article 112 ICPC accepts the principle of “*ne ultra petita*”, the NCA was not entitled to decide beyond the requests for relief submitted by the parties that presented themselves before it. However, the ACI requested in front of the NCA that the Appellant’s car be reintegrated in the final classification and that the disqualification pronounced on it be cancelled and replaced with a fine of 5000 Euros. The Appellant is therefore of the opinion that the NCA could not impose a penalty higher than that proposed by the ACI and that the Decision of the NCA was therefore vitiated.

15. The ACI, for its part, claims the following:

- (i) The Decision of the NCA is duly justifiable and suffers from no irregularity of form or substance that would justify its reform, let alone its quashing.
- (ii) The Appellant is a particularly experienced competitor who knew perfectly the rules applicable to the Competition. Furthermore, it knew all its dampers, on which it had affixed its own stickers bearing different numbers to distinguish them. It also knew that its dampers should be positioned in the correct places, in compliance with the technical rules. There was therefore no cause for the Stewards’ Decision to be challenged by the NCA without justifiable grounds, all the more so since the national sporting regulations of the ACI expressly provide for the penalty of exclusion due to technical irregularities, following the example of what is provided for in the relevant international regulations. Lastly, the ACI points out that there is no evidence that the Appellant gained no advantage from the technical irregularity noted.
- (iii) The request for a reduced sanction was made by the Appellant and simply supported by the federal Prosecutor, whose presence is required before the NCA. However, the Prosecutor is merely an independent third party with respect to the ACI, and he had not

presented a cross appeal against the Stewards' Decision and so could in no way affect the NCA's decision-making power.

16. The FIA contends in essence that:

- (i) According to Articles 2.1 and 3 of the Sporting Regulations and Article 2.3 of the Technical Regulations, it is up to the Appellant to ensure that its car is in conformity at all times, and the Appellant is also answerable for its supplier's compliance with the provisions of the Sporting and Technical Regulations.
- (ii) Referring in particular to the decisions ICA 2018-03 and ICA 2018-04, the FIA stresses that this obligation of conformity is also accepted by the FI International Court of Appeal, which recalls that "*the obligation imposed on competitors to ensure that their cars comply with the relevant regulations is an absolute and objective one and that the breach of that obligation does not depend on a fault being established.*"
- (iii) In case of a breach of the obligation of compliance, a competitor's responsibility is causal. In other words, a sanction must be pronounced against it even in the absence of fault, and this sanction is, in principle, disqualification according to the jurisprudence of the International Court of Appeal, as the claim that no performance advantage was obtained can never be considered as an argument for the defence.
- (iv) The FIA nevertheless points out that the International Court of Appeal has accepted that exceptional circumstances could allow a less severe sanction than disqualification to be pronounced against a competitor whose car was non-compliant.
- (v) In the opinion of the FIA, however, no exceptional circumstances can be invoked in this particular case. The FIA thus stresses that the Appellant was able to discover the mounting error since the dampers are marked with part numbers and that in order to get access to the dampers one has merely to remove the engine cover. The fact that the Technical Regulations allow the competitors to adjust the dampers shows that the competitors do indeed have access to the dampers. Besides, the irregularity was detected during a simple technical check requiring no lengthy technical investigation.

- (vi) The FIA adds that there is no proof that the dampers fitted on the Appellant's car were indeed those fitted originally by the supplier. These parts are in fact available on the market.

b) *Conclusions of the Court*

17. Having carefully considered the various submissions made by the parties to the procedure and listened to the statements made by them during the hearing, the Court rules as follows.

Ground 1 of the Appellant: the disproportionate nature of the sanction

18. Article 2.1 of the Sporting Regulations, which essentially reflects Article 9.15 of the International Sporting Code (the "Code"), provides that *"all drivers, competitors and officials participating in the Championship undertake, on behalf of themselves, their employees, agents and suppliers, to observe all the provisions as supplemented or amended of the International Sporting Code and its appendices (the Code), the FIA General Prescriptions, the Technical Regulations and the present Sporting Regulations, together referred to as "the Regulations"*.
19. Article 3.1 of the Sporting Regulations provides that *"it is the competitor's obligation to ensure that all persons concerned by his entry observe all the requirements of the Code, the FIA General Prescriptions, the Technical Regulations and the Sporting Regulations. (...) Throughout the entire duration of the Event, a person having charge of an entered car during any part of an Event is responsible jointly and severally with the competitor for ensuring that the requirements are observed."* Article 3.2 of the Sporting Regulations also states that *"competitors must ensure that their cars comply with the conditions of eligibility and safety throughout the Event."*
20. Article 2.3 of the Technical Regulations recalls that *"Automobiles must comply with these regulations in their entirety at all times during an event."*
21. On the basis of the above provisions, the Court finds not only that a car must be compliant throughout the running of an event, but also that a car which is found to be non-compliant before an event is simply not admitted to take part in the event, compliance with the Sporting and Technical Regulations being a condition of admissibility according to Article 3.2 of the Sporting Regulations.
22. Therefore, application of the relevant regulations can only lead to the disqualification of any car whose non-compliance is detected during or after an event.

23. This assessment is also confirmed by the constant jurisprudence of the International Court of Appeal in the matter (see in particular ICA 2018-10 and 2016-05).
24. Insofar as the Appellant itself admits that its car was non-compliant, its disqualification from Race 2 of the Competition was therefore justified in principle.
25. Nevertheless, the International Court of Appeal has already deemed in the past that in “exceptional circumstances”, the objective responsibility of a competitor for a case of non-compliance of its car can lead to a less severe sanction than disqualification (see in particular ICA 2013-03, 2009-21, 2009-26 and 2010-03).
26. According to this jurisprudence, clerical errors or mistakes in the homologation documents can constitute “exceptional circumstances”.
27. The Court nevertheless stress that even in such cases, only where there is a “*lack of any intention or negligence on the part of the competitor*” (see ICA 2013-03) can the imposition of a less severe sanction than disqualification be envisaged.
28. In the present case, the Court notes firstly that it does not emerge from the dossier that the error in the mounting of the dampers was attributable exclusively to the supplier Tatuus.
29. In its letter of 27 June 2019, Tatuus uses the conditional tense, indicating that the car (in English in the text) “*could have been delivered to Prema Powerteam with an incorrect set of rear dampers*”. In doing so, the supplier does not affirm that it effectively delivered a car that was non-compliant with regard to its dampers.
30. As to the letter from Tatuus of 10 July 2019, drawn up at the Court’s request, this merely confirms that the Appellant ordered a set of two rear dampers.
31. The Court then notes that in admitting that the car had been non-compliant upon its delivery, it was still possible for the Appellant to detect the error in the mounting of the dampers.
32. During the hearing, the Appellant thus admitted that it had affixed stickers to the car’s dampers. Furthermore, the regulations authorise competitors to carry out adjustments on these dampers, which are easily accessible. The Appellant was therefore perfectly able to detect the mounting error before the race.

33. The Appellant claims that it was not its role to check the dampers, on the grounds (1) that these had been delivered mounted by the official supplier of the Championship and (2) that they came under the category of Type 1 parts according to Article 2.7.1 of the Technical Regulations.
34. This claim must be rejected.
35. Indeed, Article 2.7.1 of the Technical Regulations merely provides that for Type 1 parts the Competitor has the obligation to (1) obtain these parts from the Manufacturer, (2) use the parts exactly as supplied by the Manufacturer and (3) have the parts repaired by the Manufacturer.
36. This article therefore does not exempt the Appellant from checking that the mounting of the dampers is compliant.
37. The Court thus concludes that, in view of the clear provisions of the relevant Regulations, it was indeed up to the Competitor to check, before the Competition, that its car was compliant.
38. As mentioned earlier, disqualification is the only sanction applicable in the event of non-compliance of a car, save in exceptional circumstances.
39. Recalling that Article 1.3.3 of the International Sporting Code expressly provides that *“it shall be no defence to claim that no performance advantage was obtained”*, the Court stresses that in order to admit the presence of exceptional circumstances and thus envisage a sanction other than disqualification, both of the following conditions must be met:
 - (a) the competitor must not have committed any fault, whether intentionally or through negligence; and
 - (b) the non-compliance of the car must be the result of a clerical error or a mistake in the official homologation documents, or be of a nature such that the impossibility for the competitor to detect it was absolute and proven.
40. The Court notes that the Appellant, who was easily able to check the mounting of the dampers, was negligent in failing to check that this mounting was compliant and therefore cannot benefit from a reduced sanction for “exceptional circumstances”, and that the only sanction that can be pronounced against the Appellant is that of disqualification.

Ground 2 of the Appellant: Decision *ultra petita* of the NCA

41. According to Article 10.9 of the FIA Judicial and Disciplinary Rules, the Court “*has all the decision-making powers of the authority that took the contested decision. [It] may admit or dismiss the appeal, in whole or in part, and may decide to confirm, waive, mitigate or increase the penalty inflicted.*”
42. The Court notes first that the Stewards had all the competences required to impose a sanction of disqualification on the Appellant, which is undisputed.
43. Concerning the NCA, the Court notes that the Appellant does not put forward any regulatory or legal clause that would indicate that the Italian National Court of Appeal does not have the same decision-making powers in disciplinary matters as the Stewards, and that these powers could be dependent on the conclusions drawn by the federal Prosecutor, whose intervention is provided for by the Italian regulations.
44. The evidence produced by the ACI shows, on the contrary, that the federal Prosecutor is independent of the ACI and that he has no judicial authority within the NCA.
45. The Court thus notes that as a Court of Appeal in charge of a case consisting in the assessment of the consequences of a car’s technical non-compliance with the relevant regulations, the NCA is free to judge the validity of the Stewards’ Decision and is not limited in its powers by the conclusions of the federal Prosecutor, as the Appellant claims without providing the slightest proof thereof.
46. Consequently, the Court thus notes that the NCA was not bound by the conclusions of the federal Prosecutor and that the claim raised by the Appellant according to the principle of *ne ultra petita* must be rejected.
47. Taking the above into account, the Appeal is rejected and the Decision is upheld. The sanction of disqualification applied for Race 2 of the Competition is thus confirmed.

COSTS

48. 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. CS 2/19 of the Italian National Court of Appeal rejecting the appeal against Decision No. 3, dated 13 April 2019, of the Stewards of the Le Castellet Competition counting towards the 2019 Formula Regional European Championship;**
- 3. Confirms the disqualification of Car No. 64 of Prema Powerteam s.r.l. (driver Olli Candwell) from the Le Castellet Competition counting towards the 2019 Formula Regional European Championship;**
- 4. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 5. Leaves it to Prema Powerteam s.r.l. 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, 26 July 2019

The President

Philippe Narmino