



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by Parolin Motorsport S.r.l.

Against the

**Decision No. 105 dated 30 April 2022 of the Stewards of the OKJ Zuera
Competition (Spain) counting towards the 2022 FIA Karting - OKJ European
Championship**

Case ICA-2022-02

Hearing of 30 June 2022, Paris

Decision of 8 July 2022



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), which comprised Mr Marek Matecki (Poland), who was designated President, Mr David Chu (Canada/Hong Kong), Mr Gérard Martin (Belgium) and Ms Waltraud Wünsch (Germany) and held a hearing at the FIA headquarters in Paris on Thursday, 30 June 2022.

Prior to the hearing, the Court received and considered submissions and attachments thereto made by Parolin Motorsport S.r.l. on one side and by the FIA on the other side.

The following persons attended the hearing:

on behalf of the Appellant, Parolin Motorsport S.r.l.:

Mr Marco Parolin, Team principal
Mr Riccardo Giacomini, Lawyer

on behalf of the FIA:

Mr Pierre Ketterer, Head of Governance, Integrity & Regulatory Affairs
Ms Alejandra Salmerón García, Senior Legal Counsel
Ms Prisca Mutesi, Senior Legal Counsel
Mr Michel Borgeaud, Karting Technical Delegate
Mr Karl Janda, Technical Delegate (witness)
Mr Hans-Jürgen Dangers, Scrutineer (witness), via videoconference

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 June 2022, presented oral arguments and addressed the questions asked by the Court. The witnesses called by the Parties responded to the questions posed to them by the Parties and the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous interpretation in French and English. 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 were conducted, notably concerning the respect of the adversarial principle or the simultaneous interpretation.

I. REMINDER OF THE FACTS

1. On 28 July 2021, the Appellant submitted to the “Automobile Club d’Italia” (ACI) a homologation application for its equipment (including lateral bodywork and bumpers) to be valid for 2022-2023. On 5 October 2021 an inspection report was issued and on 30 November 2021, an impact test was performed on the model/type of bodyworks and bumpers to be used in the Appellant’s kart No. 216 (the “Kart”) as from 2022. On 21 December 2021, the homologation form No. 017/BS/06 was delivered with a validity of two years (2022-2023).
2. On the occasion of the OKJ Zuera Competition (Qualifying Heat D-F) held in Spain on 30 April 2022 (the “Competition”) within the framework of the 2022 FIA Karting - OKJ European Championship (the “Championship”), the Stewards received at 13:37 a report (the “Report”) from one of the Judges of Facts, Mr Marcello Somera (the “Judge of Facts”) regarding the post Qualifying Heat scrutineering.
3. The Judge of Facts reported the Kart, driven by Mr Rene Lammers (the “Driver”), for the following reason:

“Driver used Bumper from Lateral Bodywork, wrong number Homologation no correct number correct 017-BS-06”.
4. Following this report, the Stewards summoned the Appellant and the Driver, by means of a correspondence issued on 30 April 2022 at 13:45.
5. On the same day, the Stewards held a hearing in the presence of Mr Marco Parolin, acting as representative of the Appellant and the Driver.
6. After having checked the evidence at their disposal and having heard the Appellant, the Stewards issued the contested decision No. 105 (the “Decision”) at 14:11.

7. The Decision held in particular that:

“The above-mentioned Competitor didn’t have the lateral Bodywork technically conform when controlled when he finished the above-mentioned session.

This fact is a violation against Art. 8.4 [recte: 9.4] of the 2022 CIK-FIA Technical Regulations and related homologation form [...].”

8. The Decision was notified at 14:22 to the Appellant and at 14:23 to the Driver. The Decision was then published at 14:23 on the official (digital) notice board.
9. At 15:23, namely within one hour of the publication of the Decision, the Appellant notified the Stewards in writing of its intention to appeal the Decision.
10. Upon request of the FIA Technical Delegate, Mr Janda, the lateral bodywork parts were sealed.
11. Upon receipt of the Appellant’s intention to appeal, the Stewards suspended the penalty imposed on the Appellant in accordance with Article 12.3.3.a of the International Sporting Code (the “Code”).
12. During the hearing before the Court, the witnesses Mr Hans Jürgen Dangers (FIA scrutineer at the competition) and Mr Karl Janda (FIA Technical Delegate at the competition) explained how the pre-event and post-qualifying scrutineerings had been conducted.
13. Mr Dangers, who attended the hearing via videoconference, began his evidence by confirming the content of his written witness statement. Mr Janda notably confirmed that he had not checked the bodywork during the pre-event scrutineering. After the race, Mr Dangers then proceeded with a full control of the Kart and observed the non-conformity of the lateral bodywork of the Kart, noting the numbers which were different between the bumper and the bodywork part, whereby the bumper (metal part) was not compliant with the homologation form. Mr Dangers explained that his colleague Mr Janda noticed as well the non-conformity of the bodywork which was then sealed by the FIA officials. Mr Dangers explained further that, according to the regulations, the engine is presented separately at the pre-event scrutineering. The safety aspect of the bodywork was controlled on Friday morning before the practice and not during the pre-event scrutineering.
14. Mr Janda, who was present at the hearing, also confirmed the content of his written witness statement. Mr Janda explained that he was acting as Technical Delegate. The witness explained that during the pre-event scrutineering they check safety items such as the correct mounting of the brake cables or other technical issues of that kind but that they do not check the assembly of the bumper and bodywork parts. Mr Janda then explained that he was called by Mr Dangers who showed him the non-conformity. He agreed with Mr Dangers and ordered that the bodyworks and the

bumpers be disassembled and sealed. Mr Janda stressed that bumpers and bodyworks must have the same homologation number as they are tested and homologated together. During a pre-event scrutineering there is however no need to check this and this was known to the teams. Mr Janda emphasised that it is clearly stated in the regulations that it is the competitors' duty to ensure conformity. According to Mr Janda, the checks made during the pre-event scrutineering are limited to parts which the scrutineers know to be a potential source of danger for the competitors. The number of chassis and engines that can be used during the competition is limited which is the reason why only those two parts are checked. The other parts, including the bodyworks and bumpers can be changed during the competition and those parts are thus checked during or after the event rather than before it.

15. The various components (the sealed bodywork/bumper units from the Appellant's kart and the specimen of a bumper with the currently valid homologation) were shown to the Court at the hearing. During the hearing, Mr Parolin confirmed that the non-conformity was due to a mistake and that there was no substantial difference between the two parts. He observed that the non-conformity was noticed only due to the different homologation numbers. Mr Parolin stressed that the teams were asked to bring the whole kart to the pre-event scrutineering and that obviously the Kart was not found to be dangerous.

II. PROCEDURE BEFORE THE COURT

16. The Appellant filed its Notification of appeal on 3 May 2022 at 17:20 and its Grounds for appeal on 23 May 2022.
17. On 1st June 2022, the ICA requested that the contested parts of the kart, which had been sealed and kept under FIA's custody, be brought to the hearing.
18. The FIA filed its Grounds in response on 9 June 2022 (English version) and on 13 June 2022 (French version).

III. REQUESTS OF THE PARTIES

19. The Appellant asks the Court in his Grounds for appeal to :

“

- a. [...], *uphold the Appeal and set aside the Decision;*
- b. *Declare that no sanction shall be imposed on the Driver;*
- c. *Confirm the final result of the Session;*



d. Confirm the final classification of the Event including the Driver in the fourth position thereof;

In the alternative:

a. [...], uphold the Appeal and set aside the Decision;

b. [...], impose the minimum sanction consisting of a warning in accordance with art. 12.4.1a ISC;

c. Confirm the final result of the Session;

d. Confirm the final classification of the Event including the Driver in the fourth position thereof;

And, in any case:

e. Order the FIA to reimburse all the legal costs and fees sustained by the Appellant, including the Appeal deposit in the amount of Euro 3.000,00 paid by the appellant in accordance with art. 10.1.2.a JDR;

f. Declare that any and all costs of the current proceedings shall be borne entirely by the FIA.”

20. In its Grounds in response, the FIA requests the Court to:

“i. further to Article 10.9 of the JDR, to dismiss the Appellant’[s] appeal and uphold the Steward’s Decision No. 105 in its entirety, as to breach of Article 9.4 of the TR and as to penalty for that breach; and

ii. order the Appellant to pay ICA costs of the appeal referenced in Article 11.2 of the JDR.”

IV. ADMISSIBILITY OF THE APPEAL BEFORE THE COURT

21. The Court notes that the Appellant brought his appeal in accordance with the provisions of the 2022 Judicial and Disciplinary Rules (the “JDR”).

22. The Court also considers that it has jurisdiction to hear this appeal.

23. Therefore, the Court deems the appeal admissible, which is undisputed.

V. ON THE SUBSTANCE

a) *Arguments of the parties*

24. The Appellant puts forward in essence the following grounds in support of the appeal:

- (i) The Appellant claims first that during the pre-competition scrutineering, the Kart was inspected by the FIA Scrutineers and approved by the Technical Delegate. The Appellant stresses further that no change was made to the kart until it was controlled after the Qualifying Heat D-F, notably as far as the parts at stake are concerned.
- (ii) Based on the above, the Appellant refers to the case ICA-2016-03 and claims that based on the principle of legal certainty, it should be able to rely on the Technical Delegate's confirmation given during the pre-competition scrutineering and that it could reasonably consider that the Kart was complying with the Technical Regulations (the "TR").
- (iii) To the Appellant's view, it was the Technical Delegate's duty, and in fact the very purpose of the pre-competition scrutineering, to identify the alleged non-conformity and to prevent the Appellant and the Driver from possibly breaching the TR.
- (iv) The Appellant adds that the parts at stake were particularly visible.
- (v) The Appellant also puts forward that having submitted the Kart to the scrutineering and having received the Technical Delegate's confirmation that it was compliant, the Appellant and its Driver acted in good faith and had no intention to breach the TR. It indeed appeared – according to the Appellant - that one of the Appellant's mechanics used the wrong parts by mistake, the duly homologated ones having been duly prepared for the Competition.
- (vi) The Appellant submits that if the Technical Delegate had noticed that mistake during the pre-competition scrutineering, the Appellant would then have immediately corrected it in installing the homologated parts.
- (vii) Stressing that the Driver did not draw any performance benefit from that mistake, the Appellant argues that neither it nor the Driver committed any fault albeit intentionally or by negligence.
- (viii) The Appellant sees the Technical Delegate's pre-competition scrutineering as a "clerical error" and therefore considers that no disqualification can be decided against the Driver according to the constant jurisprudence of the ICA.

25. The FIA, for its part, contends in its Grounds in response, in essence, what follows:

- (i) The FIA notes first that when it comes to OK-Junior karts, as in the present case, article 9.4 TR determines that the bumpers must be homologated with the

kart's bodywork. More generally, a kart must comply with its homologation form, in the present case the homologation form bearing the reference number 017/BS/06, in order to be eligible to compete in OK-Junior competitions.

- (ii) After the post-qualifying Heat scrutineering (Heat D-F), it was observed that the bumpers of the Kart did not bear the correct homologation form number, as it bore the number 49/CA/20 instead of 017/BS/06, whereas the bodywork bore the correct homologation number.
- (iii) During the pre-competition scrutineering, the FIA Scrutineers did only check the chassis and the engines of the karts in order to ensure that they were correctly and safely mounted. The rest of the karts and add-on parts were not and did not have to be checked.
- (iv) It is in any case the duty of the competitors to ensure that their karts are compliant with the TR at all times during an event and the FIA can control whether such compliance has been met at any time during the event.
- (v) Mr Karl Janda, the FIA Technical Delegate, confirmed that *"at no point during the pre-scrutineering event, did I make any statements and/or decisions (written or verbal), as to the conformity of kart no. 216 or any other kart for that matter."* The FIA scrutineers, Messrs Dangers and Somera also confirmed that they had never provided any assurance on the conformity of the kart No. 216's bumper.
- (vi) No decision was issued during the pre-competition scrutineering.
- (vii) By means of the entry form for the Championship that it signed, the Appellant is bound by the FIA Regulations and notably by the TR and the applicable Sporting Regulations (the "SR"). Based on articles 2 SR and 10 of the Specific Prescriptions (the "SP") and on article 3.4 TR as well as on article 9.15.1 of the Code, the Appellant had to ensure that the Kart was continuously compliant with the applicable FIA regulations, notably the TR, and that all persons concerned with the Appellant's entry observe such regulations. It was also the Appellant's and the Driver's duty to prove that the Kart was at all times compliant.
- (viii) The Homologation form determines that the bumper and the bodywork must bear the same reference number, namely 017/BS/06, and both must be installed on the kart together. This is particularly due to the fact that those two parts work together, as a "safety team", which is why they are tested together, ensuring that the two parts, when used together, are safe.
- (ix) The Appellant does not challenge that the Kart was not compliant but asserts that the non-compliance resulted from the mistake of its mechanic, rather than any fault on its own part or that of the Driver.

- (x) As to the proportionality of the sanction, it is the established and constant jurisprudence of the ICA that the breach of the TR, as in the present case, leads to a disqualification, subject to exceptional circumstances, which the FIA claims are inapplicable in the instant case.
- (xi) Several recent Stewards' decisions, produced by the FIA in its grounds in response, are in line with the above ICA jurisprudence.

b) *Applicable Regulations*

- 26. The applicable rules are the FIA regulations in the version in force at the time when the Competition took place, namely on 30 April 2022.
- 27. As a result, the applicable regulations relevant applicable to the present case are the 2022 Editions of the Code, the 2022 CIK-FIA Technical Regulations (TR) and General Prescriptions (GP) as well as the 2022 FIA Karting European Championship-Junior Sporting Regulations (SR).
- 28. As to the Procedural Rules, and since the intention to appeal was filed on 30 April 2022, the applicable regulations are the 2022 Edition of the FIA Judicial and Disciplinary Rules (JDR). As determined under article 14.4 JDR, French law applies to the present proceedings.
- 29. Neither the Appellant nor the FIA dispute the above.

c) *Conclusions of the Court*

- 30. Having carefully examined the various submissions made by the Appellant and the FIA, whether in writing or at the hearing, the Court rules as follows.

a. On the question of the breach of article 9.4 TR

- 31. As correctly mentioned by the FIA, the Court finds first that the Decision contains a clerical mistake as the Kart was a OK-Junior kart, to which article 9.4 TR applies, and not a KZ kart, which is governed by article 8.4 TR. Article 8.4 was thus wrongly mentioned in the Decision.
- 32. As this was plainly due to a clerical mistake and as the content of both articles is identical, the Court decides that this mistake does not trigger any other consequence save rectifying it in the present decision. In other words this mistake has no impact on the validity of the Decision. This position is not disputed.

33. Article 9.4 TR reads as follows:

“9.4 Bumpers

Front and side protections are compulsory. They must be made of magnetic steel round tubing and be homologated with the bodywork. In the absence of a rear bumper, a homologated rear wheel protection is mandatory.”

34. In accordance with article 9.4 TR, the bumpers and the bodywork of the Kart were tested within the framework of the homologation process between 28 July 2021 and 21 December 2021. The homologation form No. 017/BS/06, valid for two years, was then issued on 21 December 2021.
35. It is undisputed that the Kart’s bumper, which was used during the Competition and examined at the post Qualifying heat scrutineering, did not bear the homologation number 017/BS/06.
36. The Appellant explains that this resulted from “*a wholly unintentional mistake*” on the part of one of its mechanics, who installed onto the Kart another bumper with the homologation number 49/CA/20 which had expired.
37. Article 9.4 TR provides that bumpers must be homologated “with” the bodywork and article 6.1 TR provides that “*the homologated parts must be used as shown in the Homologation form. This is the only combination possible (...)*”.
38. As the bumper that was used by the Appellant on the Kart bore another homologation number and refers to a different homologation form, the Court concludes that the Appellant breached articles 6.1 and 9.4 TR. This result is not disputed by the Appellant that has admitted that its mechanic made a mistake.
39. Further, as it is a requirement for bumpers and bodywork to be homologated together, and bear the same homologation number, the Appellant’s submission that there has been no non-compliance in this case because the bumper which was used had indeed been previously homologated albeit separately from the bodywork, must also fail.
40. As put forward by the FIA and further to the clear wording of articles 6.1 and art. 9.4 TR, the Court stresses that this requirement is based on safety considerations. This is crucial. Testing and homologating bumpers and body parts together rather than separately is a key feature in ensuring the safety of this system.

b. On the question of the sanction and its proportionality

41. The Appellant does not dispute that the Kart was in breach. However, it asserts that there has been no non-compliance on its part because (i) the breach resulted from the honest mistake of its mechanic, and (ii) the approval by the FIA of the bumpers

at the pre-event scrutineering meant that it is quite incorrect to say that it was at *fault* for the breach.

42. According to Article 3.4 TR *“it is the duty of every driver/entrant [namely, the Appellant] to prove to the Scrutineers and Stewards of the Meeting that his kart complies with the SR of the event and the TR.”* Article 10 SP provides further that *“it is the Entrant’s responsibility to ensure that every person concerned by his entry observes all provisions of the Code, of the Technical Regulations and of the Sporting Regulations.”* Further, article 9.15.1 of the Code provides that *“the Competitor shall be responsible for all acts or omissions on the part of any person taking part in, or providing a service in connection with, a Competition or a Championship on their behalf, including in particular their employees, direct or indirect, their Drivers, mechanics, consultants, service providers, or passengers, as well as any person to whom the Competitor has allowed access to the Reserved Areas.”*
43. It is the ICA’s established and longstanding jurisprudence that the duty to comply with the technical regulations and the corresponding responsibility for any resulting breach thereof, rests solely on the competitors. The test of whether there has been non-compliance is an objective one: if there has in fact been a breach, then a finding of non-compliance follows; the subjective intention of the defaulting competitor does not form part of the analysis. In short, the intention or negligence of the competitor is irrelevant (see for instance ICA-2013-03 dated 10 September 2013, *G-Drive Racing*), which means that the Appellant must face the sanction, which follows on from a violation of the technical regulations even if it or the members of its team, had acted in good faith.
44. The Court thus concludes that the Appellant must be sanctioned and, given the ICA’s clear and longstanding jurisprudence, the sanction must be disqualification, unless the Appellant can prove that the breach took place under exceptional circumstances (see notably cases ICA-2014-03 dated 26 September 2014, *Campos Racing*, and ICA-2013-03 dated 10 September 2013, *G-Drive Racing*), which has not been shown in this case.
45. Exceptional circumstances are indeed admitted only under very limited criteria, such as a clerical error or a mistake made in the homologation document (see ICA-2013-03 with reference to ICA-21/2009, ICA 26/2009 and ICA-1/2010 dated 18 May 2010, *Young Driver AMR*).
46. In the present case, the Appellant does not claim that the breach was caused by a mistake in the homologation documentation. It claims that the breach was “caused” by the FIA Scrutineers and the FIA Technical Delegate who would have or should have *“duly and fully inspected”* the Kart before the Competition. In the Appellant’s view, those FIA’s officials confirmed that the Kart was compliant or at least should have noticed the breach during the pre-competition scrutineering.
47. It is important to be mindful that the Appellant does not claim that a breach did not take place, but instead contends that the FIA’s official representatives absolved it of

responsibility for such a breach when they confirmed that the Kart was compliant with the regulations. The Appellant argues that this is tantamount to a “clerical error” and thus constitutes an exceptional circumstance within the meaning of the ICA jurisprudence.

48. The Appellant has not in any of its filings before the hearing or at the hearing itself produced any factual evidence to support its submissions on this point. It was confirmed through the witness statements made by the FIA’s witnesses both in writing and at the hearing that the FIA officials in fact did not control the bumper and the bodywork of the Kart No 216 before the Competition but only the chassis and the engine.
49. The Court finds thus that there has been no control of the bumpers and the bodywork before the Competition and that the Appellant’s submissions on the alleged clerical error made by the FIA officials must be rejected. As a consequence, the question whether a control of the bumper and of the bodywork before the Competition could have been considered as a “clerical error” in particular, or, more broadly, as an “exceptional circumstance”, within the meaning of the ICA jurisprudence, does not have to be examined by the Court.
50. The Court holds that articles 3.4 TR and 9.15.1 of the Code are determinative. They clearly provide that the Appellant was responsible for ensuring the conformity of the Kart. The clear wording of these articles also excludes any duty on the part of the FIA officials to check the conformity of the Kart at the outset of a competition. In short, the Appellant cannot delegate its duty of compliance on the FIA officials.
51. The Appellant puts forward that it did not derive any competitive advantage from the breach of article 9.4 TR.
52. As mentioned in the case ICA-2021-03, par. 82, according to article 1.3.3 of the Code *“if an automobile is found not to comply with the applicable technical regulations, it shall be no defence to claim that no performance advantage was obtained.”*
53. Based on the above, the Appellant must also fail.
54. Based on all the above, the Court concludes that the sanction imposed by the Stewards shall be confirmed.
55. The appeal is thus rejected and the appealed Decision is fully upheld.

VI. COSTS

56. Considering the outcome of the proceedings, the Court leaves it to the Appellant to bear all the costs, in accordance with Article 11.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Rejects the appeal;**
- 3. Upholds Decision No. 105 dated 30 April 2022 of the Stewards of the OKJ Zuera Competition (Spain) counting towards the 2022 FIA Karting - OKJ European Championship;**
- 4. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 5. Orders the return of the sealed parts to the Appellant ;**
- 6. Leaves it to Parolin Motorsport S.r.l. to bear all the costs, in accordance with Article 11.2 JDR;**
- 7. Rejects all other and further conclusions.**

Paris, 8 July 2022

The President

Marek Matecki