INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by the
Automobile Club d'Italia–Commissione Sportiva Automobilistica Italiana (ACI-CSAI)
on behalf of its licence-holder Romeo Ferraris Srl against
Decision n° J2013/32 dated 15 October 2013 of the Motor Sports Council National Court of the Motor Sports Association (MSA) taken on appeal against the decision n° 5 dated 27 September 2013 of the Race Stewards of the Meeting of Donington counting towards the 2013 Superstars International Series (SIS)

Case ICA-2013-05

Hearing of 10 January 2014 in Paris

The FIA INTERNATIONAL COURT OF APPEAL ("the Court"), comprised of Mr Thierry Julliard (Switzerland), who was designated President, Rui Botica Santos (Portugal), Hervé de Liedekerke (Belgium), and Michael Grech (Malta), met in Paris on Friday 10 January 2014 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Automobile Club d'Italia-Commissione Sportiva Automobilistica Italiana (the "ACI-CSAI") on behalf of its licence-holder Romeo Ferraris SRL (the "Appellant" or "RF") against Decision n° J2013/32 of the Motor Sports Council National Court of the Motor Sports Association (MSA) ("the National Court") under which the two cars numbered 3 and 15 entered by the Appellant at the Meeting of Donington held on 31 August and 1 September 2013, counting towards the 2013 Superstars International Series (SIS) (the "Event"), were excluded from the results of each and every Series race in which they participated at that Event.

The following persons attended the hearing:

On behalf of the Appellant:

Mr Roberto Causo (Attorney-at-law)
Mr Luciano Galluzzo (Attorney-at-law)

On behalf of the MSA:

Mr Robert Jones (General Secretary & Acting Chief Executive)

On behalf of the FIA:

Mr Sébastien Bernard (FIA Legal Director)

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 10 January 2014, set out 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 in French and English. No objection to the composition of the Court or to any element of the hearing, notably the simultaneous translation, was raised by anyone.

The Parties accepted at the hearing that the order of the Court's decision be communicated after the hearing and that the complete decision be communicated later.

REMINDER OF THE FACTS

1. On the occasion of the Meeting of Donington (United Kingdom) counting towards the 2013 Superstars International Series (the "Event"), the competitor Audi Sport Italia SRL ("ASI") lodged a protest against cars n° 3 and n° 15 of RF on the grounds that the two cars contravened the provisions of Articles 13.3.2 b3 and 13.6 of the Technical Regulations of the International Series (the "Technical Regulations" or the "TR").

2. A post-event inspection of the two cars in question took place on 12 September 2013 at the dealer Mercedes-Benz Milano spa, in the presence notably of RF and ASI. At this occasion, the board of scrutineers of the Event (the "Board") first checked the shape of the RF cars' bonnets according to Article 13.6 TR and found that the bonnets on both cars were from a 2011 onwards model year Mercedes C63AMG while the cars homologated were of the 2007-2011 model year Mercedes C63AMG. In other words, the bonnets were genuine Mercedes parts but from the incorrect model year. The Board then checked the consistent thickness in every part of RF cars' flat bottom according to Article 13.3.2 TR and found that the flat bottom on both cars had material added in several places and thus could not be considered as a flat surface.

3. Based on the results of the inspection, the Board found in its report dated 27 September 2013 (the "Report") that both cars were "*not regular"*. The Board mentioned however in the Report that "*Obviously, for the details identified as not regular, we cannot say that these elements can boost the performance of the car being out of the possibility of the board of scrutineers. To determinate this needs an aerodynamic study. In particular, the increase of the thickness of the internal parts that create a doubling thickness of the bottom place (absolutely irrelevant to aerodynamic and thus for the performance) is to be understood as a growth of the robustness than* [sic] *of the performance of the car*".

4. Having considered the Report, the Stewards of the Event (the "Stewards") heard the parties concerned on the occasion of the following event in the International Series, namely the one taking place at Imola (Italy) on 27 September 2013.

5. At the outset of the hearing, Mr Smith, Steward of the Event, mentioned that the "*matter* [was still] *under the jurisdiction of the UK ASN – Motor Sports Association, as the Protest by Audi Italy had been made at the* [Event] (…) *and it was only as a courtesy that all parties had not been requesting to return to the UK to continue the hearing*".

6. During the hearing, the Appellant, represented by Mr Mario Ferraris, admitted that its team had made a wrong interpretation of the Technical Regulations.

7. After the hearing, the Stewards found that the Appellant's two cars did not conform with Articles 13.3.2 b3 and 13.6 TR and imposed on the Appellant's cars a drop of 10 places on the starting grid of Race 1 of the Imola event in a decision numbered 5 and dated 27 September 2013. In that same decision, the Stewards ordered "*that the results of the races at Donington are now final"*.

8. The Appellant immediately announced its intention to file two appeals on behalf of the drivers of its cars n° 3 and n° 15 and subsequently filed its written submissions with the National Court.

9. The Appellant's cars benefited from the suspensive effect of the appeal and were able to participate in Race 1 in Imola, the Appellant's car n° 3 finishing second and the Appellant's car n° 15 finishing seventh.

10. The National Court expressed reservation as to its jurisdiction on the appeal filed before it by the Appellant, considering that the Stewards had given their decision n° 5 at Imola, Italy, and that Article 182 of the International Sporting Code (the "Code") provides that "*competitors whatever their nationality shall have the right to appeal against a sentence or another decision pronounced on them by the Stewards of the Meeting before the ASN of the country in which that decision has been given*".

11. Nevertheless, the Appellant asked that the appeal be heard by the National Court, which the MSA itself did not object to.

12. Referring notably to Articles 13.3.2 b3 and 13.6 TR and to Article 189 of the Code, the National Court rejected the Appellant's appeal and decided on 15 October 2013 to increase the sanction decided by the Stewards, by excluding the cars n° 3 and n° 15 of the Appellant from the results of each and every Series race in which they participated at the Event (the "Decision").

13. This Decision was notified to the Appellant on 24 October 2013.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

14. On 30 October 2013 the ACI-CSAI, acting on behalf of its licence-holder RF, lodged an appeal before the Court (the "Appeal") against the Decision.

15. In its submissions, received by the Court on 25 November 2013, the Appellant contends that the Court should:

"*pronounce the Stewards of the Meeting's appealed decision as null and void for the evident defence right infringement and totally lacking any reasonable ground*

and sustain this appeal as correctly introduced and founded either on the formal aspects and on the ground" and "*cancel the two appealed decisions (Stewards of the Meeting and National Court) as totally not grounded and/or motivated*".

16. The MSA filed its submissions on 11 December 2013 and concluded that the Decision be upheld.

17. The FIA, in its grounds in response received by the Court on 16 December 2013, invites the Court to assess the admissibility of the appeal brought by the Appellant before the National Court, then to assess the facts of the case and give a ruling on the possible breach of the Technical Regulations.

ADMISSIBILITY OF THE APPEAL BEFORE THE ICA

18. The Decision was issued by the ASN of the United Kingdom, namely the National Court and was notified to the Appellant on 24 October 2013.

19. The ACI lodged the Appeal before the Court on 30 October 2013, namely within the deadline provided under Article 17.3 (i) b) of the Judicial and Disciplinary Rules (the "JDR"), applicable to appeals against decisions of a judicial body of an ASN. The ACI also paid the appeal deposit in due course.

20. Considering the above, the Court finds the appeal admissible, which is undisputed.

ON THE SUBSTANCE

First plea – admissibility of the appeal before the National Court

a) Arguments of the parties

21. The FIA asked the Court to decide on whether or not the National Court had jurisdiction in the present matter.

22. The FIA's view is that according to Article 182 of the Code, the appeal against the decision n° 5 of the Stewards should have been lodged before the Italian ASN, as the decision was given to the Appellant in Imola, Italy.

23. The Appellant and the MSA confirmed at the hearing that they shared the FIA's view. Yet the Appellant admitted at the hearing that he had insisted that the National Court take a decision in this matter.

b) Conclusions of the Court

24. The Court finds that the wording of Article 182 of the Code is clear and states that an appeal against a decision taken by the Stewards of an event must be brought

before the ASN of the country in which the decision was given. The Code therefore determines jurisdiction by reference only to the location at which the decision is taken, rather than the nationality of the Stewards or the country of the event or any other criteria. As the decision was given to the Appellant in Imola, Italy, the Court finds the Appeal had to be lodged before the national court of the ASN in Italy. That the decision of the Stewards was taken in Italy "*out of courtesy*", as indicated in the minutes of the hearing before the Stewards of 27 September 2013, does not change the fact that it was given in Italy.

25. Based on the clear wording of Article 182 of the Code, the Court should now consider whether the Decision should be declared null and void for lack of jurisdiction of the National Court of Appeal of the British ASN and be sent back to the National Court of Appeal of the Italian ASN.

26. The Court notes first that none of the parties to the previous appeal procedure challenged the jurisdiction of the National Court. The Appellant even confirmed at the Hearing that it had insisted that the National Court take a decision in the present case.

27. The Court observes further that, according to the minutes of the hearing before the Stewards, held on 27 September 2013, Mr Smith, Steward of the Donington Event, referred clearly to the terms of Article 182 of the Code, without however formally quoting it, and stated to all the parties that the place of jurisdiction should remain the United Kingdom.

28. The Court then notes that the Appeal was lodged before it with full devolutive effect and the Appellant accepted the competence of the National Court, upon a clear statement of the Stewards made at the hearing in Imola.

29. Based on all the above the Court finds that under the specific circumstances of the present case it is appropriate and commended by the principles of the procedural economy and of good faith that the present case be judged without further delay by the Court. Therefore, the Court decides (i) to set aside the Decision for lack of jurisdiction of the National Court, (ii) not to send the case back to the national court of the Italian ASN and (iii) to judge the present case *de novo*.

Second plea – number of decisions issued by the Stewards

a) Submissions of the Parties

30. The Appellant claims first that there were actually two decisions of the Panel of the Stewards as two of its drivers and cars were sanctioned and as it had paid two appeal fees based on two documents which were handed over to it.

31. The MSA argues that the Panel of the Stewards did not issue two decisions but only one, which was copied in order to have each sample signed by the driver of each car.

b) Conclusions of the Court

32. The Court finds that there was indeed only one decision under which two drivers and cars were sanctioned. This is quite a current practice in sports legal matters, notably in procedures which are governed by the Code and the JDR. The Court notes in particular that the two papers put forward by the Appellant are of the same content and, more importantly, refer to the same decision number, namely number 5.

33. The fact that the Appellant paid two appeal fees before the National Court should simply be taken into consideration in the allocation of the costs.

Third plea – breach of the rights of the defence

a) Submissions of the Parties

34. The Appellant puts forward that:

(i) The National Court did not bring any motivation in its Decision with respect to the alleged issue of the violation of the rights of the defence before the Stewards. The Appellant was indeed not allowed to be represented by its attorney before the Stewards, which allegedly leads to an infringement of Article 153 of the Code and even of its "*complex structure*". According to the Appellant, the Code gives any competitor the right to "*two grade* [sic] *of judgments: one in front of the Stewards, the second in front of the National Court. The ICA Appeal is a third opportunity (not a "supplementary one") just in a few cases*";

(ii) The National Court omitted to mention Mr Galluzzo as one of the Appellant's two lawyers representing the Appellant before the National Court;

(iii) The National Court allegedly judged the case on the basis of "*eventual possible future occasions*" whereas it should have judged only on the facts that are under examination.

In essence, the Appellant claims that all these procedural mistakes led to a breach of its rights of defence and should make the whole proceedings in first and second instance null and void.

35. The MSA and the FIA both submit that the devolutive effect of the appeal filed before the National Court cured any alleged procedural failure made by the Panel of the Stewards.

b) Conclusions of the Court

36. The Court finds that if any of the facts put forward by the Appellant were to be material procedural failures, allegedly leading to a breach of the rights of the defence, the latter would in any case have been cured by the devolutive effect of the appeal before the National Court as to the breaches allegedly committed by the Panel of Stewards, and would be cured by the devolutive effect of the appeal before the Court for the same breaches and the breaches allegedly committed by the National Court. Both courts can indeed review the case *de novo*, namely both in facts and in law, so that the Appellant had, at the level of the National Court and then at the level of the Court, the opportunity to put forward all submissions it would find necessary to support its case, which the Appellant obviously did.

37. On top of that, the Court refers to the opinion of various authors, notably Prof Gabrielle Kaufmann-Kohler, a learned Professor in matters of sports law, stating, with reference to the procedural rights of the defence, notably guaranteed by the European Convention for Human Rights (ECHR), that "*under the classic concept of human rights the purpose of human rights is to protect the individual from the State, as the holder of public power. Human rights are not, from a classical perspective, intended to apply directly to private relations between individuals. It should be deducted from this view that human rights only apply to disciplinary proceedings carried out by sports governing bodies that act by virtue of a delegation of power from the State*". (Legal Opinion on the Conformity of Certain Provisions of the Draft World Anti-Doping Code with Commonly Accepted Principles of International Law, 26 February 2003, para. 63). This opinion is confirmed by the ECHR itself through one of its most eminent members, Judge Rudolf Bernhardt, who expressed his personal view that "*the European Convention concerns the protection of the individuals from specific invasions by the States, the ECHR and other similar instruments are not directly applicable*".

38. The FIA, an international association governed by French law, does not act by virtue of a delegation of power from the State. The Appellant actually does not claim it.

39. The Court therefore rejects all the Appellant's submissions on the procedural failures allegedly committed by the Panel of the Stewards and the National Court.

40. This being stated, the Court wishes nevertheless to stress a few points in relation to the most important submissions raised by the Appellant with respect to the alleged violation of the rights of the defence.

i) The Appellant's legal representative was not admitted at the hearing of the Panel of the Stewards

41. The Appellant does not point out in its submissions where the right to be assisted by an attorney before the Panel of the Stewards is guaranteed in the Code, referring simply to Article 153 of the Code, which deals with the scale of penalties which can be inflicted, and to the "*complex International Sporting Code structure*".

42. The Court finds in fact that there is no such right at all. The decision of the Stewards being in principle taken "on the spot" minutes or hours after the corresponding incident took place, it is clear that such decision must be taken after factual and technical elements have been taken into consideration by the Stewards having heard the parties involved. The fact that, in the present case, the decision was taken a few weeks after the incident does not open a right to be assisted by a lawyer in front of the Stewards. In that sense, the decision of the Stewards should be considered in the same way as administrative decisions which can be taken in the absence of a lawyer. As mentioned above, the appeals *de novo* before the ASN and then before the Court leave plenty of opportunities to present factual and legal submissions with the assistance of a lawyer. The Stewards thus had the right to refuse that an attorney participates in the hearing.

ii) Omission to designate in the Decision one of the Appellant's legal representatives

43. The Court does not see how this type of clerical error could impact the validity of any decision. The Appellant actually does not refer to any precedent that would support its position. *In casu* the Appellant does not contest the fact that its representative, Mr Galluzzo, did not take any active part in the said hearing.

iii) Reference to future events in the Decision

44. Although such references may appear unnecessary or, in some cases, undesirable, the Court does not see, here again, how this could have an impact on the validity of the Decision and no valid legal argument has been brought forward by the Appellant which would lead the Court to change its view.

iv) Failure to examine in the Decision the issue in first instance of the violation of the rights of defence

45. As mentioned above, the National Court was able to review the case *de novo* with full devolutive effect. There was therefore no need for it to go through all the points raised by the Appellant on this topic, unless the alleged violations would have led the National Court to consider that the decision of the Stewards should be set aside and the file sent back to the Stewards with the instruction to take a new decision

on the matter. However, the Appellant does not claim that the National Court should have sent the case back to the Stewards.

Fourth plea – absence of irregularities on the Appellant's cars

a) Submissions of the Parties

46. The Appellant contests the fact that there were irregularities on its cars.

i) On the flat bottom

47. With respect to the constant thickness of the flat bottom of its cars as required by Article 13.3.2 b3 TR, the Appellant claims that the "*matter could have been simpler but has been complicated by an overacting Technical Delegate, followed by an even more overacting National Court."* As the protest was referring only to the "*plane thickness*" and as "*the plane was declared of the same thickness apart from some reinforcement due to the fixing system*", there was nothing else to do but to admit that the flat bottom of the cars was legal.

48. The Appellant claims further that "*the topside of flat bottom is not relevant*". The Appellant alleges that the National Court should not have paid attention to the top side of the element called "flat bottom panel" as the "*thickness was the only element in contention*".

49. The Appellant then puts forward that the National Court pushed its analysis beyond the Protest and the limits of the Technical Report by considering that the flat bottom of its cars might be made of composite material which might not be allowed. There was simply no evidence on that point.

50. With respect to both irregularities, the Appellant claims further that the Technical Delegate and the National Court went "*extra petita*". The Technical Delegate allegedly did not "*find the limits of his investigation on the protest*" and the National Court did not "*limit the Technical Report on what was actually protested*".

51. The Appellant also claims that the National Court admitted that the modifications found in its cars were "legal if approved". This case is therefore only a matter of "*bureaucratic approval*". As the Appellant allegedly had been assured that no request for approval of the modifications was necessary, it assumed that nothing had to be done. In that context, the Appellant refers further to a decision of the Italian ASN dated 9 February 2012 where the competent authority found that modifications to cars were allowed if they had been homologated by the Permanent Bureau without objections, which, to the Appellant's view, was the case in the present matter.

52. The Appellant argues that the Decision lacks motivation on the alleged non-conformities of its cars. He also claims, without further development, that "*the appealed decision completely omitted that the request of approval was verbally made on the shake down scrutineering but was considered unnecessary by the Technical Delegate*".

ii) On the bonnets

53. As to the second irregularity linked to the bonnets and Article 13.6 TR, the Appellant submits that the questioned bonnets were already in place at the homologation, which, according to the Appellant, is reflected in the homologation form of the cars where pictures of the cars show the presence of such bonnets. The stamp on the passport of car n° 15 gives the proof, according to the Appellant, that the aesthetic configuration of the bonnets never changed and had therefore been the same in 2013 throughout the competition. On the basis of the principle of good faith, it is the Appellant's view that the cars were given the technical passport with these bonnets and that no irregularity can be found here.

54. The MSA, on its side, supports the conclusions of the Decision, where the National Court states that the modifications on the Appellant's cars found in the Report were not allowed and had to be considered as irregular.

b) Conclusions of the Court

i) On the flat bottom

55. The Court first considered the irregularity relating to the absence of constant thickness of the flat bottom on each part of the Appellant's cars (so called "plane thickness").

56. It noted first that the Appellant itself admitted that the plane thickness of its cars' flat bottom was not constant overall. This inconsistency allowed the cars to find a lighter solution than with a constant plane thickness where the rest of the plane would have had to be made as thick as where the reinforcements had been made. The Appellant did not object to this statement during the hearing.

57. The Court then found that this irregularity could not have been seen during the shakedown inspection, which is undisputed.

58. Based on the above, the Court finds that there was indeed an infringement of Article 13.3.2 b3 TR and that such infringement could not possibly have been seen during the Shakedown nor was it approved by the Permanent Bureau of the SIS. The Appellant actually does not claim that it had requested a specific approval from the Permanent Bureau of the SIS with respect to this modification, which could not have been seen during the homologation process. The precedent quoted

by the Appellant is therefore irrelevant in the present matter. Article 3 TR clearly mentions that any modification must be approved by the Permanent Bureau. Article 3 TR also clearly expresses the consequences of not requesting such approval, namely the exclusion of the car, purely and simply.

59. Thus the Court does not concur with the Appellant's argument when it qualifies modifications which should be approved as legal by the Bureau as being only "*bureaucratic"*. Article 3 TR clearly mentions that such approval is mandatory and that the lack of such approval triggers the sanction provided under Article 3 TR, namely exclusion.

60. The Court then considered the submissions of the Appellant which actually deal with both irregularities, namely that the National Court went "*extra petita*". The Court refers first to the fact that it set aside the Decision on the grounds mentioned above. However, this submission of the Appellant must also be considered at the level of the Court, which retained an infringement of Article 13.3.2 b3 TR.

61. The Court first reviewed the Protest and noted that ASI mentioned specifically in it that the latter was lodged for "*non-compliance of their* [the Appellant's] *car* (…) *to the Technical Regulations of the Series, in respect of the following articles 13.6 and 13.3.2 b3*". Then, ASI mentioned in appendices 1 and 2 the facts that led ASI to conclude that there was an infringement of the articles.

62. With respect to the issue of the flat bottom, ASI writes that "*the flat panel covering the horizontal surface at bumper's bottom profile level does not comply to the Series Technical Regulations as it does not abide to the provisions of the above referred article for the plane thickness to be* (…) *constant for each part*".

63. Based on the above, the Court finds first that the clear reference to Article 13.3.2 b3 TR and the reference to the flat bottom of the Appellant's cars not being compliant with the regulations already constitute clear grounds for inquiring on all aspects of that flat bottom.

64. More importantly, the Court finds also that under the SIS Sporting Regulations (SR), disciplinary proceedings can indeed be started by a protest but the officials can also start such disciplinary proceedings *ex officio*. The cases of sanctions mentioned notably under Article 28 SR and more specifically under Article 3 TR do not require a protest to be filed in order to sanction competitors. The Code, to which the SR specifically refers under Article 29.1 SR, does not require the filing of a protest in order to start a disciplinary proceedings. On the contrary, Article 171 ISC provides clearly that "*an official acting in his official capacity may even in the absence of a protest take such official action as the case warrants*". This capacity to deal *ex officio* with irregularities shows that the scope of a protest is, in any event, not binding for the disciplinary authorities.

65. This submission of the Appellant must thus be rejected as well.

ii) On the bonnets

66. As to the alleged infringement of Article 13.6 TR and the issue of the different bonnets, the Court notes that the Appellant did not specifically ask for written confirmation that those different bonnets were admitted, as clearly requested under Article 3 TR. By doing so, the Appellant took the risk of being sanctioned during a routine inspection or following a claim raised by a competitor. However, the Court finds that this infringement could apparently be easily seen during the shakedown inspection and that, on the basis of the principle of good faith, it could be alleged that the inspectors of the Permanent Bureau should have reacted *ex officio.* However, the Court notes also that the documents put forward by the Appellant do not prove clearly that the questioned bonnets were installed on the car at the inspection. It renounces, however, to investigate this matter further, as another infringement was already found against the Appellant's cars.

67. Based on the foregoing, the Court decides to retain only the infringement of Article 13.3.2 b3 TR and will not consider the other alleged infringement relating to Article 13.6 TR while assessing the sanction to be taken against the Appellant's cars.

Fifth plea – misinterpretation and irrelevance of the alleged irregularities found on the Appellant's cars and impossibility of increasing the sanction or disproportionate nature of the sanction in the Decision

a) Submissions of the Parties

68. As to the sanction to be imposed on the drivers, should the Court find that the TR were breached, the Appellant argues that in any case, the alleged irregularities found on its cars did not lead them to gain a competitive advantage and that, based on the ICA jurisprudence quoted by the Appellant, this should exclude any sanction being imposed on it or, in any case, this should lead to far milder sanction being taken than the sanction of exclusion decided by the National Court.

69. The Appellant also puts forward that in any case the National Court could not increase the sanction imposed on its cars by the Stewards for the reason that the ASI, which first filed the Protest before the Stewards and then lodged an appeal before the National Court, did not proceed further before that latter court.

70. The MSA claims on its side that the sanction imposed on the Appellant's car is proportionate.

71. As to the increase of the sanction decided by the National Court, both the MSA and the FIA refer to Article 189 of the Code which explicitly sets out the powers

conferred upon each ASN's National Court of Appeal, in particular with respect to an appeal against a decision taken by a panel of stewards, as in the present case. According to both the MSA and the FIA, the National Court was empowered to increase the sanction pronounced against the Appellant.

b) Conclusions of the Court

72. After having carefully reviewed Article 189 of the Code, the Court finds that there is no doubt that the National Court must apply the correct sanction and consequently increase the sanction imposed by the Panel of Stewards. In any case, the Court has already decided to set aside the Decision taken by the National Court, so this is no longer an issue for the present matter, at least as far as the competence of the latter court is concerned.

73. Based on Article 17.9 JDR with reference to Article 189 of the Code, the Court stresses that it can also decide if the sanction decided by the Stewards should be confirmed, mitigated or increased. This is simply consistent with the devolutive effect of the appeal before the ICA in disciplinary cases.

74. Indeed, Article 189 of the Code reads as follows: "*The National Court of Appeal may decide that the penalty or other decision appealed against should be waived, and, if necessary the penalty mitigated or increased, but it shall not be empowered to order any competition to be re-run*".

75. Referring back to the facts of the case and to the irregularity found on the Appellant's cars with respect to Article 13.3.2 b3 TR, the Court refers to Article 3 TR, which notably states that any modification not explicitly approved by the Permanent Bureau will lead to the exclusion of the car from the event in which it participated and in any further event until the modification has been suppressed or regularised. This sanction must be strictly applied without any discretion of the Court.

76. After having reviewed all the circumstances of the case as well as various precedents issued notably by the ICA, the Court comes to the unanimous conclusion that none of the mitigating circumstances mentioned in those precedents, such as a clerical error, a formal confirmation from an official representative of the relevant competition organiser, etc., were applicable to the present case.

77. The Court finds further that the Appellant's responsibility for the non-conformity of its cars must be assessed on the principle of strict liability as systematically mentioned in those precedents.

78. Based on all the above and in the absence of any mitigating circumstance in relation with a third party's behaviour, the Court decides that the Appellant's cars

n° 3 and n° 15 must be excluded from the races of the Meeting at Donington counting towards the 2013 Superstars International Series (SIS).

79. In this respect, the Court stresses that the decision of the Stewards was incorrect as Article 3 TR does not leave them any discretionary power with respect to unapproved technical modifications. In those cases, Article 3 TR clearly requires that a sanction of exclusion be imposed on the Appellant's cars.

80. With respect to the Appellant's submission on the final classification of Races 1 and 2 at Donington, the Court stresses that the decision of the Stewards was appealed before the National Court and then before the Court. Therefore, according to the general rules of proceedings and in the absence of any contrary provision in the Code, the JDR and the SIS SR and TR, the appeals before the National Court and the Court suspended the decision of the Stewards, including the operating part where the Stewards (1) declared the results of Races 1 and 2 at Donington as final and (2) sanctioned the Appellant with a 10-place Grid Penalty.

81. The competent Sporting Authority will therefore have to draw the sporting consequences of the ruling of the Court as expressed in the present decision.

Sixth plea – Misinterpretation of the power of the Organisers and the ASN (stability of decisions), common practice of the National Court and reference to a previous ICA case

a) Submissions of the Parties

82. Besides the submissions already mentioned in the present decision, the Appellant puts forward other submissions without further reasoning which seem, for two of them, to express his resentment towards the National Court for allegedly expressing unnecessary opinions or considerations on the technical delegates or the practice of the Court. In the last submission. the Appellant also rejects an ICA precedent quoted by the National Court.

b) Conclusions of the Court

83. After having carefully reviewed those submissions as far as understandable, the Court cannot find any element which could impact its conclusions expressed above.

COSTS

84. The Court stresses first that that the Decision was set aside on mere procedural grounds, which the Appellant did not raise before the National Court but, on the contrary, which the Appellant asked the National Court not to take into consideration.

85. The Court then notes that the Appeal was rejected and that, eventually, it imposed the same sanction on the Appellant's cars as the one that had been decided by the National Court.

86. Based on the foregoing, the Court leaves it to the Appellant to bear the costs in accordance with Article 18.2 JDR.

87. However, the Court admits the Appellant's submission under which the Appellant claims that it should not have paid two appeal fees before the National Court.

88. In any case, as the National Court's decision was set aside, the Court orders that the appeal fees paid by the Appellant to the National Court, which includes the contribution to the National Court's costs paid in surplus, be paid back to the Appellant by the MSA.

ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

1. **Declares the appeal admissible;**

2. **Sets aside the Decision n° J2013/32 of the Motor Sports Council National Court of the Motor Sports Association (MSA);**

3. **Confirms the contested decision n° 5 dated 27 September 2013 with respect to the finding that cars n° 3 and n° 15 of Romeo Ferraris Srl did not comply with the Technical Regulations;**

4. **Orders the exclusion of cars n° 3 and n° 5 of Romeo Ferraris Srl of the races of the Meeting of Donington counting towards the 2013 Superstars International Series (SIS);**

5. **Orders the competent Sporting Authority to draw, as appropriate, the sporting consequences of this ruling;**

6. **Orders the MSA to reimburse the appeal fees paid by Romeo Ferraris Srl;**

7. **Orders the conservation of the appeal fee paid to the Court by Romeo Ferraris Srl;**

8. **Leaves it to Romeo Ferraris Srl to pay all the costs, in accordance with Article 18.2 of the Judicial and Disciplinary Rules of the FIA;**

9. **Rejects all other and further conclusions.**

Paris, 10 January 2014

Thierry P. Julliard, President