

INTERNATIONAL COURT OF APPEAL (ICA)
OF THE
FEDERATION INTERNATIONALE DE L'AUTOMOBILE (FIA)

CASE:

Appeal lodged by

**the Automobile Club d'Italia (ACI)/
Commissione Sportiva Automobilistica Italiana (CSAI)
on behalf of its licence holder, Vergani Racing,
against**

**the decision taken by the Spanish National Court of Appeal
on 11 May 2000**

**concerning the event in the International Series "Open Telefónica 2000"
run on the Circuit of Cataluña (Spain)
on 16 April 2000**

Hearing of Wednesday, 12th July 2000 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr Philippe ROBERTI de WINGHE (Belgium), elected President, Dr. Erich SEDELMAYER, (Austria), Mr. Vassilis KOUSSIS (Greece), and Mr. Reginald REDMOND (Ireland);

Sitting in Paris on Wednesday, 12 July 2000, at the Headquarters of the Fédération Internationale de l'Automobile, 8, place de la Concorde, 75008, PARIS;

Ruling on the appeal lodged by the Automobile Club d'Italia (ACI) / Commissione Sportiva Automobilistica Italiana (CSAI) on behalf of its licence holder Vergani Racing against the decision taken by the Spanish National Court of Appeal on 11 May 2000 concerning the event in the International Series "Open Telefónica 2000" run on the Circuit of Cataluña (Spain) on 16 April 2000;

After hearing for the ACI/CSAI, the appellant, Mr Roberto CAUSO, Lawyer with the Rome Bar, for the competitor Vergani Racing, Mr Francesco MARZI, for the Real Federación Española de Automovilismo (RFEA), Mr Joaquin VERDEGAY DE LA VEGA, and as knowledgeable parties, Messrs Claudio and Nicola BARUSI from Venturini Racing Team, as well as the Chairman of the Panel of the Stewards of the Meeting, Mr Fidel GARCIA who, on account of his duties in the event, was invited to leave the room at the beginning of the session and return when called upon to be heard;

Having recognized that the procedure was in order, that the appeal was admissible, that the rights of the parties had been duly examined both prior to the hearing and during the hearing itself, that the appellant, the protesting competitor and the knowledgeable parties had supplied detailed explanations and answers when requested during the hearing with the aid of simultaneous interpretation which was deemed satisfactory by the parties involved,

WHEREAS prior to all discussion the facts must be reviewed;

WHEREAS on the occasion of the event in the International Series "Open Telefónica 2000" run on 16 April 2000 on the Circuit of Cataluña in Spain, at 3 :25 p.m. when the two races of the event were over, a protest was lodged by the competitor Venturini Racing (Car N° 5), represented by Mr Claudio BARUSI, against the competitor Vergani's Car N° 27 driven by Giuseppe BURLOTTI, on the grounds that a part of the car had been modified in breach of Articles 11.19 and 11.20 of the regulations of the Series;

WHEREAS the competitor Vergani was notified at 3 :45 p.m. that a technical inspection was to be carried out on car N° 27 at 3 :50 p.m. regarding the part containing " milled holes in the hub carrier where the security clamp is affixed "; the part was subsequently placed under seal at 3 :55 p.m.;

WHEREAS at 4 :35 p.m., having examined Car N°5 (Venturini) and Car N° 27 (Vergani), the Scrutineers concluded that while Car N° 5 was in conformity, Car N° 27 was not in conformity due to a modification consisting in “ milling holes in the hub carriers of the 4 wheels where the security clamp is affixed ”;

WHEREAS at 5 :05 p.m. Mr VERGANI, for the competitor Vergani Racing (Car N° 27), declared that, in his view, there were several machined versions of the part which differed slightly from one another, and this could be easily verified by checking the other vehicles participating in the event or by asking the manufacturer, COLONI;

WHEREAS at 5 :30 p.m. the Panel of the Stewards of the Meeting considered that the competitor Vergani was in breach of Articles 11.19 and 11.20 of the Open Telefónica 2000 regulations for unauthorized modification of a vehicle part, and consequently the competitor was excluded from the classification of the first and second races on account of the holes made in the hub carrier where the security clamp is affixed, despite a declaration made by the manufacturer, COLONI, at 4 :40 p.m. to the effect that, in order to be able to determine conformity or non-conformity, the part would have to be examined at the factory;

WHEREAS at 5 :37 p.m. the competitor Vergani notified his intention to appeal against the decision of the Stewards of the Meeting and at 5 :40 p.m. a cheque for 100,000 Pesetas (601.012 Euros) was made out for the corresponding fee;

WHEREAS the appeal was duly lodged and the statement by the competitor Vergani sent on 18 April 2000;

WHEREAS it was under these circumstances that the appeal by the competitor Vergani was heard by the National Court of Appeal on 11 May 2000, with the help of an interpreter;

WHEREAS the decision of the Spanish National Court of Appeal was notified by fax on 25 May 2000, and the appeal lodged by the ACI/CSAI on behalf of Vergani Racing on 31 May 2000, within the required time limit;

WHEREAS under these circumstances the RFEA, on behalf of the competitor Venturini, requested the International Court of Appeal :

1. to declare inadmissible the appeal lodged by the competitor Vergani on the grounds that the fee for appealing before the National Court of Appeal was never paid

2. to confirm the decision taken by the Spanish National Court of Appeal on 11 May 2000, i.e. the exclusion of competitor Vergani from the two races of the “ Open Telefónica 2000 ” event for modification of a part which was considered to be in violation of the Articles in the Regulations of the event referred to above;

WHEREAS the ACI/CSAI requested on the contrary that the decision be quashed on the grounds that the rights of the defence were not respected and that the claimed infraction was in actual fact never committed;

On the inadmissibility of the appeal by Vergani before the International Court of Appeal

WHEREAS the argument raised by the RFEA cannot be accepted due to the fact that the payment or non-payment of the fee for an appeal before the National Court of Appeal exclusively concerns the admissibility of the appeal before the NCA, and it is up to the NCA to take the necessary steps to verify whether or not the appeal fee has been paid, the appeal being inadmissible if the fee has not been paid; the International Court of Appeal is in no way concerned by this question, which was raised after the decision was taken;

On the non-respect of the rights of the defence

WHEREAS although the competitor Vergani claims he was not able to understand the meaning of the statement regarding the infraction, which was communicated in Spanish, it was difficult for him to back this position since the document concerning the appearance of Mr Lucio Vergani - apparently representing the competitor Vergani - before the Stewards of the Meeting, along with his reply, revealed that he was aware of the statement's contents and that he had necessarily informed Mr MARZI since he replied that there had been different versions of the part in question between 1998 and 2000;

WHEREAS the rights of the appellant/competitor lodging the appeal before the National Court of Appeal were respected with regard to the understanding of the accounts given and the statements made in that an interpreter had been present to translate;

WHEREAS it therefore cannot be established that the rights of defence were not respected;

On the substance

WHEREAS it appears in the end that the only question before the International Court of Appeal is whether or not the part in the Coloni Car N° 27 which participated in the event had been modified from the original;

WHEREAS according to the protesting competitor Venturini who was heard during the session, the modification involved widening the holes designed to hold the security clamp, thereby facilitating the affixing or removal of the clamp while changing the wheels which was mandatory during the second race of the event;

WHEREAS the Scrutineers had simply declared that there was non-conformity, without giving any explanation;

WHEREAS during the hearing the Chairman of the Panel of the Stewards, Fidel Garcia, explained that the litigious part had been compared by the Scrutineers with a part taken from the stock of spare parts provided by the manufacturer COLONI and that both the part from the stock and the litigious part had been placed under seal;

WHEREAS the International Court of Appeal found it surprising that these two parts - which were still under seal and which would have provided a useful comparison - had not been presented to the Court by the RFEA, which had the parts in its possession ;

WHEREAS in addition, the Scrutineers' report did not refer to any such comparison, but mentioned only that the part was not in conformity;

WHEREAS in taking its decision regarding exclusion, the Panel of the Stewards relied, without questioning it, on the above-mentioned Scrutineers' report; as the part in question was not presented to the Court, it was difficult for the International Court of Appeal to say whether or not the part was in conformity;

WHEREAS moreover the catalogue of the manufacturer Coloni refers to modifications in the machining of the litigious part; in addition the same part on the other cars which ran in the event was not checked, with the exception of Car N°5; and the manufacturer Coloni was incapable of stating on the spot whether or not there was conformity;

WHEREAS under these conditions, no serious proof was presented to the effect that the competitor Vergani modified the part thus leading to its non-conformity;

WHEREAS in this case the International Court of Appeal has no alternative but to quash the decision taken by the Spanish National Court of Appeal;

ON THESE GROUNDS,

DECLARES AND JUDGES to be admissible the appeal lodged by the Automobile Club d'Italia (ACI)/Commissione Sportiva Automobilistica Italiana (CSAI) on behalf of the competitor Vergani,

DECLARES the appeal to be justified,

QUASHES the decision referred to above and NONSUITS the Real Federación Española de Automovilismo (RFEA) of the entire case,

DECLARES that no proof was presented as to the non-conformity of the litigious part with regard to the original part,

LEAVES it to the competent authority to re-establish the classification of the two races in the "Open Telefónica 2000" run on the Circuit of Cataluña (Spain) on 16 April 2000, taking into account the present decision,

ORDERS the Real Federación Española de Automovilismo to pay all the costs of the case and of the appeal.

Paris, 12th July 2000

(signature)

The President