

INTERNATIONAL COURT OF APPEAL (I.C.A.)

of the

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE
(FIA)**

CASE:

**Appeal lodged by the Automobile Club de Monaco
on behalf of competitor Coli & Cie. (team Schlessler/Magne, Car N° 200),
in the presence of the following**

- 1. The Fédération Française du Sport Automobile (FFSA) on behalf of
its licence-holder Jean-Louis Schlessler;**
- 2. The Japan Automobile Federation (JAF) on behalf of its competitor/licence-
holder Hiroshi Masuoka;**
- 3. The Deutscher Motor Sport Bund (DMSB) on behalf of its competitor/
licence-holder Jutta Kleinschmidt**

**concerning Decision n°9 of the Stewards of the Meeting
of the Paris/Dakar event taken on 20 January 2001
during the Cross-Country Rally run on 29 December 2000 to 21 January 2001
and counting towards the 2001 FIA World Cup for Cross-Country Rallies**

Hearing of Monday, 5 March 2001 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, composed of Mr Jan van ROSMALEN (Netherlands), elected President, Mr Philippe ROBERTI de WINGHE (Belgium), Mr Pedro ROMERO (Spain), and Mr Reginald REDMOND (Ireland),

Meeting in Paris on Monday, 5 March 2001 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 of Monaco on behalf of its competitor, Coli & Cie. (team Schlessler/Magne, Car N° 200) against decision N°9 taken by the Stewards of the Meeting on 20 January 2001, inflicting a one-hour time penalty on the competitor in the Paris/Dakar event of the Cross-Country Rally run from 29 December 2000 to 21 January 2001 and counting in the 2001 FIA World Cup for Cross-Country Rallies;

Having heard:

For the appellant :

- The Automobile Club of Monaco (ACM) on behalf of the competitor Coli & Cie. (Car Buggy Schlessler-Renault) represented by Mr Roland POYNARD, Lawyer with the Paris Bar ;

For the intervening parties

- The Fédération Française du Sport Automobile (FFSA) on behalf of its licence-holder Jean-Louis SCHLESSER, present at the hearing, represented by Mr Nicolas DESCHAUX, Head of the Legal Department, assisted by Mr Roland POYNARD, Lawyer with the Paris Bar;
- The Japan Automobile Federation (JAF) on behalf of its competitor/licence-holder Hiroshi MASUOKA, represented by Mr Katsutoshi TAMURA, JAF Director and Secretary General and Mr Ullrich BREHMER, assisted by Mr Jean-Pierre G. DUFFOUR, Lawyer with the Paris Bar;
- The Deutscher Motor Sport Bund (DMSB) on behalf of its competitor/licence-holder Jutta Kleinschmidt, represented by Mr Matthias FELTZ and Mr Günter KRAMPE, Lawyers with the Frankfurt Bar;

For the FIA

- Mr Pierre de CONINCK, Secretary-General of the Sport Department;

Having acknowledged that the procedure with full argument on both sides was in order, the rights of the parties having been duly examined, both in the proceedings prior to the hearing and during the hearing itself, the appellant and the parties having provided all the detailed explanations and answers requested during the hearing with the help of a simultaneous translation system which was recognised as satisfactory;

On the admissibility of the appeal lodged by the Automobile Club of Monaco

WHEREAS the ACM and the FFSA submitted during the hearing that the appeal was admissible by virtue of Article 184-2 of the International Sporting Code which grants jurisdiction to the International Court of Appeal by providing that appeals against decisions taken by Stewards of the Meeting may be submitted “*not to the National Court of Appeal of the country of the event but directly to the International Court of Appeal with the assistance and the agreement of their respective ASNs*”, and explained that these agreements had been obtained from the respective ASNs, ie. the FFSA, the JAF and the DMSB;

WHEREAS for their part, the JAF and the DMSB maintained, both in their memorandum and during the hearing, that the ACM’s appeal was not legal for the following reasons:

- On the one hand, counting from the time the Steward’s decision was notified at 9:05 p.m. on 20 January 2001, the required time limit of 7 days for lodging an international appeal had not been respected as the only legal appeal lodged by the ASN of the competitor, the ACM, was on 7 February 2001;
- On the other hand, regarding the appeal brought forward by the FFSA on 1st February 2001, this was not the ASN of the competitor, and as the agreement of the Japanese ASN had not been secured at this date, this recourse was moreover again not legal, in addition to which the agreements of the concerned ASNs were submitted only to the FFSA and not to the FIA;

WHEREAS the International Court of Appeal must therefore examine the issues raised by both the appellant and the intervening parties;

WHEREAS first of all it should be remembered that Article 1P1 of the specific Race Regulations, which states that “*In the event of a sporting or legal dispute, France will be the sole competent authority for any protest before courts*”, is inapplicable as this provision is rendered null and void by Article 56 of the International Sporting Code which formally sets this out;

WHEREAS the visa granted only constitutes an authorization for the running of the event provided the event is organized in compliance with the International Sporting Code, and whereas therefore the provisions of the International Sporting Code may not be modified or cancelled by *sui generis* agreements which are not in keeping with the provisions of the Code itself;

WHEREAS it must therefore be noted that no waiver was planned relative to Article 56 of the International Sporting Code, while Article 1.6 of the Regulations of the event specifies that “*...Any specific rule not complying with the FIA sporting and technical regulations must be the subject of a separate request for a waiver from FIA. Once approved, it must appear in bold type in the supplementary regulations.*”;

WHEREAS in this case, this waiver does not appear to have been granted;

WHEREAS on the other hand, Article 3 of the Race Regulations specifies that the Rally in question is organized in accordance with the International Sporting Code of the FIA, and moreover, whereas Article 1P1 of the specific Race Regulations does not grant jurisdiction to any specific court, specifying only that France is the only competent country having jurisdiction for protests before the courts, an extremely vague and unspecific statement which is not in breach of Article 56 of the International Sporting Code, or of the clear and complete terms and provisions this Article sets out;

WHEREAS under these circumstances, the National Court of Appeal could in no way have been the court of the FFSA, which would have been to the detriment of the National Court of Appeal of the country where the event was run, the latter being the only competent court by virtue of Articles 81, 180, and 182 of the International Sporting Code;

WHEREAS it must also be recalled that only a competitor has the right to bring an appeal before the International Court of Appeal against a decision which determines a violation and which imposes a penalty (Article 171 of the International Sporting Code), the competitor in this case being Coli & Cie., licence-holder of the Automobile Club of Monaco, the only ASN entitled to lodge an appeal;

WHEREAS concerning international appeals, Article 185 provides that “*An international appeal may be brought:.....by the ASN on behalf of its competitors or licence-holders....*”; and by licence-holders, independently of competitors which are also licence-holders, one means - as indicated in Article 152 and 184.4 of the International Sporting Code - organizers, officials, drivers, etc., which have been sanctioned by lower courts, while in this case, only the competitor Coli & Cie. was sanctioned and only the competitor Coli & Cie. lodged - in due and proper form through the Automobile Club of Monaco - an appeal before the International Court of Appeal, the court to which this one appeal was referred with the involvement of the parties concerned;

WHEREAS regarding the agreement of the ASNs concerned which was required in order to refer the case to the International Court of Appeal, and as this does not involve an FIA World Championship but an FIA World Cup which is not mentioned in either Article 180.3 or in Article 184.3 of the International Sporting Code, the JAF and the DMSB maintained that they had given their agreement recognizing the competence of the International Court of Appeal only to the FFSA and not to the International Court of Appeal itself; whereas their claims in this respect must be rejected; whereas the only problem is to determine whether those ASNs had given their consent to recognize the competence of the International Court of Appeal; this consent effectively was given, and it is irrelevant which body received this consent; their intentions and their decisions served to confirm their recognition of the International Court of Appeal as the sole competent jurisdiction;

WHEREAS regarding the deadlines, it must be noted that while Jean-Louis SCHLESSER, who stated he had acted on behalf of Coli & Cie, did in fact manifest within the hour his intention to appeal, in accordance with Article 182 of the International Sporting Code, no regular appeal was lodged before the International Court of Appeal before 7 February 2001 with the actual agreement of the parties concerned;

WHEREAS this appeal appears to have been lodged in due and proper form by the Automobile Club of Monaco on behalf of its competitor, and the deposit fee paid; the only question which remains is if the appeal was lodged before the deadline;

WHEREAS in this respect, the publication of the decision at the event - in accordance with Articles 182 (national appeal) and 186 paragraph 2 (international appeal) of the International Sporting Code, which require the sanctioned party to notify its intention to appeal the decision within one hour of its publication – must not be confused with the appeal itself, and not just the intention to appeal, but the confirmation of the decision to appeal which is formalized, for an international appeal, in a written statement submitted by the competitor's ASN, in accordance with Article 185.2 of the International Sporting Code, accompanied by the deposit fee;

WHEREAS the deadline for lodging national appeals expires 2 days after the date the decision of the Stewards of the Meeting is officially notified, subject to the notification of the intention to appeal within the hour following the decision (Article 182 of the International Sporting Code) and which must also be notified in writing, submitted at the same time as the deposit fee;

WHEREAS for international appeals, *“The time limit for forwarding an appeal to the FIA expires seven days after the publication of the decision by the ASN or the stewards of the meeting on condition that the stewards of the meeting are notified in writing, and within one hour of the publication of the decision, of the intention to appeal, and that this notification is accompanied by the necessary fee (see Article 185). This appeal may be brought by fax or by any other electronic means of communication with confirmation of receipt. Confirmation by a letter of the same date is required. »* (Article 186 paragraph 2 of the International Sporting Code) and as the appeal must be lodged by the ASN on behalf of the competitor, in writing, signed by a duly qualified representative of this ASN (Article 185.2 of the International Sporting Code);

WHEREAS from these provisions one must conclude that, while the intention to appeal must be notified on the spot within one hour following the publication of the decision, on the other hand, the appeal itself can be lodged up to 7 days following the written notification of the decision;

WHEREAS in this respect, and in view of the fact the competitors are frequently far away, it is absolutely essential, in order that they have the necessary amount of time required to calmly read and reflect upon the decision that has been handed down, that

the competitor be completely familiar with the terms of the decision which often has only been read once posted on the board or only heard during the meeting of the Panel of the Stewards;

WHEREAS it is therefore necessary that the competitor have at his disposal the **written notification of the decision** to which he can refer before taking his decision instead of taking a decision on the spur of the moment;

WHEREAS these provisions may also be explained by the fact that an appeal can lead to a penalty if it is improper or abusive, so that time for reflection is all the more necessary;

WHEREAS in this case, the decision, although published within the hour, does not seem to have been notified in writing to the competitor or to the competitor's ASN, such that, on 7 February 2001, without any prior **written notification**, the appeal proves admissible;

On the merits

WHEREAS we must recall the facts of the case,

WHEREAS at the start of the Tambacounda/Dakar stretch, three competitors were still in a position to win the Rally:

- Car N° 224 – Masuoka was in the lead
- Car N° 200 – Schlessler followed at 7 minutes 28 seconds
- Car N° 205 – Kleinschmidt followed at 39 minutes 43seconds

while

- Car N° 202 Servia/Lurquin, car Buggy Schlessler-Renault, which was identical to Car N°200 and entered by the same competitor Coli & Cie. was 4th in the general ranking though had no chance of winning, trailing by 1 hour 38 minutes 58 seconds;

WHEREAS Servia's Car N°202 appeared first at the control, followed by Schlessler's Car N° 200, although Masuoka's Car N° 224 had expected to;

WHEREAS this driver was in the lead and indisputably had the right to leave before Cars 202 (Servia) and 200 (Schlessler), in accordance with Article 9.3 of the Race Regulations, which states that "*From the second leg onwards, the starts shall be given in the order of the last classification of the selective section(s) of the previous leg.*";

WHEREAS Servia and Schlessler, knowing that Masuoka was in the lead, had to be aware that this driver would pass the time check point before they would;

WHEREAS Masuoka, who also knew what the situation was, seeing the joint move by Cars 202 and 200 to pass the check point before him, thus tried to overtake Car 202 in order to take the lead which was rightfully his, while Cars 202 and 200 arrived ahead of schedule, Car 202 by 6 minutes and Car 200 by 3 minutes;

WHEREAS the Clerk of the Course, Mr van BREMPT - who should have seen to it that the order of the departures was respected because he had the authority to do so, by virtue not only of Article 142 of the International Sporting Code, but also of Article 16.6 of the Race Regulations - noted this in his report, pointing out that Schlessler had got out of his vehicle and had addressed Maimon, co-driver of Car N° 224, in order to tell him that he had overtaken him in the zone, and that he, Schlessler, was requesting Maimon's exclusion from the race;

WHEREAS following this threat, Car 224 let Cars 202 and 200 reach the time control ahead of him;

WHEREAS under these circumstances, the order of arrival of the drivers which was 5 minutes earlier than the departure time, should have been as follows:

- Car 202: 9:15 to leave at 9:20
- Car 200: 9:13 to leave at 9:18
- Car 224: 9:11 to leave at 9:16

WHEREAS the actual departures, due to the confusion which reigned, took place as follows:

- Car 202: 9:16
- Car 200: 9: 18
- Car 224: 9:20

WHEREAS the order of the departures was thus reversed, and Masuoka's Car 224 found itself behind Cars 202 and 200 when in fact it should have been in front of them;

WHEREAS after the departure under these conditions, the Clerk of the Course, who was following the race from a helicopter, noted that Car 202, which had just taken the lead, let Car 200 driven by Schlessler overtake it;

WHEREAS Masuoka's Car 224 caught up with Car 202 and tried to overtake it off the track, succeeding only at the second attempt - whereas Car 202 should have let him overtake, in accordance with Article 11P1 of the Race Regulations – and breaking his suspension at a subsequent curve;

WHEREAS on the basis of the texts in the case, the explanations of the parties, and after viewing the videocassettes produced by the appellant and the JAF, it is clear that Servia's Car 202 appears to have blocked Masuoka's Car 224 in order to enable

Schlesser's Car 200 to gain an important lead, the first two cars creating right from the start a cloud of sand and dust which rendered all visibility and driving difficult;

WHEREAS in the minutes of their meeting the Stewards felt Article 19.9 of the Race Regulations (refusal to start on time in the attributed position, with penalties that may go as far as exclusion from the race) and Article 5.4 – in reality Article 5.5 (unsportsman-like, incorrect or fraudulent action with penalties that may go as far as exclusion from the race) should be applied, and in decision N°9, the Stewards felt it appropriate to inflict a time penalty of 1 hour on the competitor of the two teams involved, ie. team 202 and 200; this decision was posted on 20 January 2001 at 9:05 p.m., decision against which only team 200 appealed;

WHEREAS it is up to the International Court of Appeal to examine the grounds of the sentence;

WHEREAS it is difficult to apply Article 19.9 of the Regulations as, in this case, the alleged refusal to start on time is not proven in that the drivers respected the departure times they were given, albeit wrong ones;

WHEREAS on the other hand, Article 17.11 of the Race Regulations which provides that *“Any failure on the part of a crew to observe the rules of the check-in procedure defined above (and in particular the fact of entering a control zone more than a minute earlier than check-in time) will be recorded by the chief controller at that post and sent in a written report to the Clerk of the Course”* should be applied;

WHEREAS the report from the Clerk of the Course was in effect forwarded to the Panel of Stewards of the Meeting, who then handed down the decision referred to;

WHEREAS in this respect, the International Court of Appeal notes that while Schlesser declared to the Stewards that he had miscalculated, arriving early at the time check, Servia on the other hand admitted that he had, on the contrary, deliberately checked in early, while his co-driver Lurquin had subsequently declared to the press: *“We did it on purpose of course to get the penalty, to leave first”*;

WHEREAS when questioned during the hearing, Schlesser declared *“I arrived early because I did not want to start behind Masuoka, who would have left me in a cloud of dust”*;

WHEREAS under these circumstances the early arrivals of both Schlesser and Servia are easily explained;

WHEREAS on the basis of discussions and documents submitted, this was a concerted action which was likely to jeopardise the fairness of the competition, as set out not only in Article 5.5 of the Race Regulations but also in Article 151-c of the International Sporting Code, which states that a breach of the rules, in addition to

specific cases already defined, shall mean to include “.... *any act prejudicial to the interests of any competition*”;

WHEREAS there is no alternative but to confirm Decision N°9 of the Panel of Stewards of the Meeting;

ON THESE GROUNDS,

On the admissibility of the appeal

RULES and JUDGES that the appeal from the Automobile Club of Monaco on behalf of the competitor Coli & Cie. is admissible,

On the substance

DECLARES the appeal to be ill-founded and

CONFIRMS decision N°9 taken by the Panel of Stewards of the Meeting dated 20 January 2001 which imposes a one-hour time penalty on competitor Coli & Cie. for car N°200 driven by Schlessler/Magne,

LEAVES it to the sporting authorities to re-establish the classification on the basis of the present decision,

DECLARES that the costs of the case in the lower jurisdiction as well as the appeal will be borne by the appellant.

Paris, 5 March 2001

(signature of J.W.G. van Rosmalen)

THE PRESIDENT