

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

CASE

**Appeal brought by
the Federação Portuguesa de Automobilismo e Karting (FPAK),
on behalf of its competitor, Mitsubishi Motors of Portugal S.A.,
against the decision taken by the Stewards of the Meeting
of the Rallye d'Orient at 12.30 hrs on 16 August 2003
and notified to the competitor Mitsubishi at 12.45 hrs,
concerning the Rallye d'Orient (Cappadocia) event
which took place from 10 to 16 August 2003, counting towards
the 2003 FIA World Cup for Cross-Country Rallies**

Hearing of Tuesday 7 October 2003 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, composed of Mr Vassilis KOUSSIS (Greece), elected President, Mr Xavier CONESA (Spain), Mr Michael LIMB (Great Britain) and Mr Reginald REDMOND (Ireland),

Meeting in Paris on Tuesday 7 October 2003, at the headquarters of the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008,

Ruling on the appeal brought by the Federação Portuguesa de Automobilismo e Karting (FPAK) against the decision taken by the Stewards of the Meeting of the Rallye d'Orient on 16 August 2003, having rejected the protest by the competitor Mitsubishi Motors of Portugal S.A. on the grounds that it was lacking in clarity,

WHEREAS following various procedural difficulties, the case, at the joint request of the Automobile Clubs concerned, was referred to the International Court of Appeal in accordance with Article 184.2 of the International Sporting Code,

Having heard,

For the appellant: Mr Matthias FELTZ, Barrister at the Frankfurt Bar, representing the Federação Portuguesa de Automobilismo e Karting, assisted by Mr Joao Paulo ALVES, Team Manager of Mitsubishi Motors of Portugal S.A., Mr Carlos SOUSA and Mr Henry MAGNE (driver and co-driver),

For the respondent: Mr Bruno SOTTY, Barrister at the Court of Dijon, representing the Automobile Club of Monaco on behalf of the competitor Coli & Cie and the driver Jean-Louis SCHLESSER,

For the FIA: Mr Pierre de Coninck, Secretary General of FIA Sport, assisted by Mr Sébastien Bernard, Head of Legal Affairs, and Mr Jacques BERGER, Head of the FIA Technical Department,

Having also heard the knowledgeable parties, namely Mr Alexandre CORREIA, Mr Rui FARIA, Mr Alain ROSSIGNOL and Mr Jean-Marc BONNAY,

Having acknowledged that the procedure was in order and the appeal admissible, the rights of each of the parties having been duly examined, both in the proceedings which

preceded the hearing and during the hearing itself, the appellant, the competitors, the drivers and the knowledgeable parties having been duly heard and having provided all the detailed explanations requested from them during the hearing and having received answer, with the help of a simultaneous translation system which was recognised as satisfactory by the parties,

WHEREAS the parties maintained their respective points of view, and the FIA left it to the wisdom of the Court while stressing, however, that the itinerary imposed on the competitors by the Road Book had not been followed by the driver SCHLESSER over a part of the route,

WHEREAS the problem raised in this case was whether or not the specified itinerary of a special stage, where the element of speed was preponderant, had been respected,

WHEREAS the document produced by the FIA, the accuracy of which was recognised by the parties, clearly showed that at km 179.23 the routes followed by the competitor SCHLESSER and by the other competitors totally diverged; the itinerary that the competitors were supposed to follow covered a distance of 8.13 km whereas the route followed by SCHLESSER represented a distance of only 5 km, in a straight line while the route taken by the competitors was winding,

WHEREAS this resulted in an advantage to the benefit of the driver SCHLESSER, in that between passage controls 2 and 3 he gained a saving of 2 minutes and 40 seconds over his closest rival,

WHEREAS the driver SCHLESSER claimed that, by continuing in a straight line instead of following the route imposed by the Road Book, he had not committed an offence, having remained within the tolerance of 3.3 km required by the Regulations as regards the GPS; that he had thus remained within the limit of this tolerance, having committed no offence, although he did claim to have made a mistake in not turning right at km 179.23,

WHEREAS in order to judge this claim, it is necessary to refer to the Supplementary Regulations of the event, and to the FIA Standard Regulations which must in any case be respected, in conformity with Article 3 of those regulations which states that an event is run in accordance with the FIA International Sporting Code and its Appendices, as well as with the general prescriptions of the Regulations which must take precedence, as recognised by the parties at the hearing,

WHEREAS besides, the Supplementary Regulations of the event state, in Article 1P1, that *“This event will be run in accordance with the FIA 2003 standard and technical regulations for Off Road Rallies.”*,

WHEREAS Article 10P of the Supplementary Regulations states: *“All crews will be given a Road Book (including a map) and the passage check points which must imperatively be followed, failing which a penalty as far as exclusion could be applied.”*,

WHEREAS it is thus specified in those Supplementary Regulations that the Road Book must imperatively be followed, on pain of the penalty indicated above, just as the passage controls, described as passage check points, must be observed,

WHEREAS in this respect no doubt exists that the FIA Regulations, in Article 10.1, state: *“Each crew shall receive a road book or maps indicating the route and/or the compulsory Passage Control points, which they must observe on pain of penalties which may go as far as exclusion.”*, and also: *“The official route of the Event is that described in the road book as distributed to the competitors.”*,

WHEREAS it emerges from these combined clauses that the itinerary in the Road Book, indicated very clearly on the right hand side, must be observed, the obligation to remain within 3.3 km of the GPS zones being merely complementary,

WHEREAS this interpretation of cumulative, and not alternative, conditions is indisputable and without it there would have been no point in specifying the route in the Road Book,

WHEREAS in addition, it would be hard to understand why a competitor who did not follow the itinerary given in the Road Book – which was nevertheless followed by the other competitors – should benefit from an undue advantage in the form of a shorter distance to cover than the other competitors,

WHEREAS irrespective of the statements of the knowledgeable parties, some of whom come within the circle of influence of Mitsubishi Motors of Portugal S.A., and who did not bring any serious enlightenment to the proceedings, the ICA was in possession of proof, in the form of the uncontested document supplied by the FIA, that

the driver SCHLESSER did not follow the itinerary and thereby gained a clear advantage,

WHEREAS, even acknowledging that the driver SCHLESSER made a mistake regarding the route, as he confessed at the hearing, this circumstance in no way affects either the obligation to follow the route or the consequences resulting from failure to do so,

WHEREAS, since equality of opportunity must imperatively be respected, there is reason to invalidate the decision of the first judges and pronounce the exclusion of car n° 201, competitor Coli & Cie (crew: SCHLESSER/LURQUIN), from the event,

ON THESE GROUNDS,

As to the form,

DECLARES and RULES that the appeal brought by the FPAK on behalf of its competitor, Mitsubishi Motors of Portugal S.A., is admissible,

As to the content,

INVALIDATES the decision of the first judges,

Giving a new **RULING**,

DECLARES and RULES that the fact that the driver SCHLESSER failed to respect the itinerary indicated in the Road Book for the special stage, leg N° 5, constitutes a significant offence, in the absence of any possibility of a contrary interpretation of either the Supplementary Regulations or the FIA Regulations,

EXCLUDES car N° 201, competitor Coli & Cie (crew: SCHLESSER/LURQUIN) from the event in question,

LEAVES it to the sporting authority to draw the consequences of the present decision while rectifying the classification of the event accordingly,

ORDERS the appeal fees to be refunded to the appellant,

LEAVES it to the competitor Coli & Cie to pay the costs, which will be calculated in accordance with Article 190 of the International Sporting Code,

Made in Paris, 7 October 2003

The PRESIDENT