

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal lodged by

The Automobile Club - Association Française des Automobilistes (ACAFA)

against the decision taken by

the FIA General Assembly on 23 October 2009

concerning the affiliation of the Automobile Club de l'Ouest (ACO) to the FIA

Case 2/2010

Hearing of Tuesday, 29 June 2010 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, (“the Court”), comprising Mr Jan STOVICEK (Czech Republic), who was elected President, Mr Hervé de LIEDEKERKE (Belgium) and Mr Thierry JULLIARD (Switzerland), met in Paris on Tuesday, 29 June 2010, at the Fédération Internationale de l'Automobile, 8 Place de la Concorde, 75008 Paris.

The Court, ruling on the appeal lodged by the Automobile Club - Association Française des Automobilistes (ACAFA) (“the Appellant”) against the decision taken by the FIA General Assembly on 23 October 2009, concerning the affiliation of the Automobile Club de l'Ouest (ACO) to the FIA (the “contested decision”), has listened to the declarations and examined the arguments of the ACAFA, the ACO and those of the FIA (the “Respondent”).

Attending the above hearing were:

For the ACAFA:

Mr Didier Bollecker (President)
Mr Christian Scholly (Legal Director)

For the ACO:

Mr Jean-François Veroux (Lawyer)

For the FIA:

Mrs Susan Pikrallidas (Secretary General, Automobile
Mobility and Tourism)
Mr Sébastien Bernard (FIA Legal Director)
Mr Pierre Ketterer (Legal Adviser)

The parties made their submissions and, at the hearing of 29 June 2010, presented their oral arguments and replied to the questions posed by the Court. The hearing followed the adversarial principle, with the aid of simultaneous translation, which was not subjected to any criticism by anyone involved.

REMINDER OF THE FACTS

1. On 9 June 2009, the FIA Secretariat received a request for affiliation from the ACO, which was dated 27 May 2009 and was based on article 3(2) of the Statutes of the FIA (“Members entitled to vote”).

2. On 20 October 2009, the FIA Senate decided to redirect this request to article 3(5) of the FIA Statutes (“Associate Members not entitled to vote”).
3. The question of the admission of the ACO was placed on the agenda of the General Assembly of 23 October 2009, under point N°17-A “Admission of new members to the FIA (the Committee’s proposals being communicated during the session)”.
4. On 23 October 2009, the FIA Committee proposed to the General Assembly that it accept the ACO’s request for affiliation as an Associate Member not entitled to vote for one year. This proposal was accepted by the General Assembly on the same day, by 33 votes by show of hands (with 25 votes against).

The result of this vote by show of hands was announced by the President of the Assembly immediately after this procedure.

PROCEDURE AND FORMS OF DECISION REQUESTED BY THE PARTIES

5. In a letter received on 26 February 2010 by the Secretariat of the ICA, the Appellant lodged an appeal against the decision of the FIA General Assembly of 23 October 2009, without, however, formulating any clear and precise requests or conclusions.
6. The ACO, in its intervention, requests the Court:
 - to dismiss the pleas made by the Appellant and to strike them from its appeal.
7. The FIA, in its memorandum of 24 June 2010, requests the Court:
 - to dismiss the Appellant’s demands, requests and submissions as unfounded;
 - to judge and declare that the contested decision must be neither amended nor annulled and to confirm it in all its provisions.

ADMISSIBILITY

8. All members of the FIA in attendance, and in particular the Appellant, became aware of the contested decision immediately after it was voted upon by the FIA General Assembly on 23 October 2009. Mr Bollecker confirmed during the hearing of the ICA that he had taken part in the vote by show of hands, that he had voted against the point in question and that the President of the Assembly had then immediately announced the result of the vote.

Moreover, this is confirmed by the letter sent by the Appellant to the FIA dated 26 October 2009 in which the Appellant raised certain points that it believed were not in conformity with the statutory procedure.

9. According to Article 17, paragraph 1, point 3 of the rules of the ICA, the deadline for lodging an appeal against a decision made by the FIA General Assembly in accordance with the Statutes is within 7 days following the notification of the decision.
10. The notification of the decision mentioned in Article 17, paragraph 1, point 3, may only be defined as when the party concerned becomes aware of it.
11. Contrary to the arguments of the Appellant, the time period for the lodging of the appeal was not activated by the sending of a draft set of minutes, which represents no more than the provisional record of decision taken months earlier, which was already being applied and which was known to all members of the FIA who were present at the General Assembly and, therefore, by the Appellant, from the moment of the decision.
12. Any other interpretation of the above-cited prescription period in the rules of the Court would in effect be contrary to the spirit of the rules on deadlines for appeal, which are always short. Moreover, if it were to be considered that the period for lodging an appeal was activated only by the written communication of the minutes of the General Assembly, this could imply waiting for their definitive confirmation by the next General Assembly, which could mean that it may be a year or more before it became known whether a particular decision of the General Assembly was to be appealed.
13. As such the Appellant's appeal dated 26 February 2010 was manifestly out of time, the deadline having expired on 30 October 2009.
14. For these reasons, the appeal is judged to be inadmissible.
15. In application of Article 24 of the rules of the ICA, the costs of these proceedings shall be awarded against the Appellant, the inadmissibility of its appeal having been considered as a dismissal.

ON THOSE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal inadmissible.**
- 2. Orders the Appellant to pay the costs.**

Paris, 29 June 2010

The President