



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by Koski Motorsport

Against the

**Decision No. 138 dated 30 April 2022 of the Stewards of the OKJ Zuera
Competition (Spain) counting towards the 2022 FIA Karting - OKJ European
Championship**

Case ICA-2022-03

Hearing of 1st July 2022, Paris

Decision of 4 July 2022



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), which comprised Mr Riccardo La Cognata (Italy), who was designated President, Mr Mark Kletter (Austria), Mr David Miles (Australia) and Mr Dieter Roskopf (Germany, who attended via videoconference), held a hearing at the FIA headquarters in Paris on Friday, 1st July 2022.

Prior to the hearing, the Court received and considered submissions and attachments thereto made by Koski Motorsport and the FIA.

The following persons attended the hearing:

on behalf of the Appellant, Koski Motorsport:

Mr Jan Koski, Team principal
Mr Dmitry Matveev, Driver, via videoconference
Ms Yuliya Matveeva, Mother of the Driver, via videoconference
Ms Alice Allard, Lawyer
Mr Luca Lamboux, Intern

on behalf of the FIA:

Mr Pierre Ketterer, Head of Governance, Integrity & Regulatory Affairs
Ms Alejandra Salmerón García, Senior Legal Counsel
Ms Prisca Mutesi, Senior Legal Counsel
Mr Simone Perego, FIA Karting Championship Manager
Mr Nigel Edwards, Race Director (witness)
Mr Pasquale Lupoli, Deputy Race Director (witness)

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 written submissions and, at the hearing on 1st July 2022, set out oral arguments and addressed the questions asked by the Court. The witnesses called by the Parties addressed the questions asked by the Parties and the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous interpretation in French and English. None of the Parties raised any objection, in relation either to the composition of the Court or to the manner in which the proceedings and the hearing were conducted, notably concerning the respect of the adversarial principle or the simultaneous interpretation.

I. REMINDER OF THE FACTS

1. On the occasion of the OKJ Zuera Competition held in Spain on 30 April 2022 (the “Competition”) within the framework of the 2022 FIA Karting – OKJ European Championship (the “Championship”), the Stewards received two reports from the Judge of Facts, Mr Kris Lambrecht (the “Judge of Facts”).
2. The first report No. 97 (the “Report 97”) was sent at 16:12 and determined that during the Qualifying Heat E-F, the driver Dmitry Matveev (the “Driver”) who was driving the kart No. 215 for the Appellant did a “*contact driving*” being the explanation that “*kart no.215 made contact with kart no.206. kart no.206 lost the position and following this contact kart no.215 made chaos behind him*”. This report referred to three videos of the related facts. This is the Incident No. 1.
3. The second report No. 98 (the “Report 98”) was sent at 16:15 and determined that the Driver performed a “*dangerous driving*” adding that “*in lap 5 and after the last corner going into the Start/Finish line for the last lap, during the Qualifying Heat E-F, kart no.215 was forcing kart no.206 on the curbs. Following this, kart no.206 lost the control of his kart, was going into a spin and was facing the opposite direction of the track. Some karts avoided his chassis, but kart no. 276 could not avoid his kart in time and made a frontal contact with kart no. 206. The result of this accident was that drivers 206 and 276 were injured and had to be taken to hospital*”. This report referred to two videos of the related facts. This is the Incident No. 2.
4. Following these reports, the Stewards summoned, on the same day, the Appellant and the Driver, by means of a correspondence issued at 16:51.
5. On the same day, the Stewards held a hearing in the presence of Mr Jan Koski, acting as representative of the Appellant, and the Driver.
6. After having considered the evidence at their disposal and having heard the Appellant and the Driver, the Stewards determined that the Driver had breached Article 3.6.2.b of the 2022 International Karting Code of Conduct (the “CDC”) and should be disqualified. The Stewards issued their decision No. 138 (the “Decision”) at 17:47.



7. The Decision held in particular that:

“In the Session concerned in the first lap by MP 6 the above-mentioned Driver made contact with kart 206 and in lap 5 in the exit of the last corner he forced out kart 206.”

8. On the same day, the Decision was notified at 17:54 to the Appellant. The Decision was then published at 17:56 on the official (digital) notice board.
9. On 30 April 2022 at 18:09, namely within one hour of the publication of the Decision, the Appellant and the Driver notified the Stewards in writing of their intention to appeal the Decision.
10. Upon receipt of the Appellant’s intention to appeal, the Stewards suspended the penalty imposed on the Appellant and on the Driver in accordance with Article 12.3.3.a of the International Sporting Code (the “Code”).

II. PROCEDURE BEFORE THE COURT

11. The Appellant filed its Notification of appeal on 4 May 2022 at 11:24 and confirmed on 25 May 2022 at 19:37 that such Notification included its Grounds for appeal.
12. On 1st June 2022, the Appellant sent a request to the FIA asking it to provide the Appellant with all the video evidence of the Heat E-F of the Competition.
13. On 2nd June 2022, the FIA asked in essence the President of the Hearing to decide on such request from the Appellant.
14. On 3rd June 2022, the President of the Hearing issued its Decision No. 1 and decided that:

“The Appellant’s request that the FIA provides that the video evidence of the race of the 2022 FIA OKJ European Championship which took place in Zuera (heat E-F) is granted;

The FIA shall comply with this decision at the latest on 13 June 2022, at 17:00 (French time), i.e. the deadline to notify its Grounds in response;

The other requests of the FIA are dismissed.”

15. On 8 June 2022, the FIA sent a new request to the President of the Hearing asking him in essence *“to invite the Appellant to provide a faithful and strict translation of the document sent on 3 May 2022”* and *“to disallow the Appellant to provide any additional document or submissions based on the analysis or references to “past incidents” that were not contained in the Appellant’s grounds for appeal (i.e. its correspondence dated 3 May 2022).”*



16. On 9 June 2022, the President of the Hearing issued its Decision No. 2 and decided, in essence, that:

“the Appellant is ordered to notify to the Court by Monday 13th June 2022, at 17:00 (French time), a faithful and strict French translation of its original Notification of appeal which shall comply with the requirements of Paragraph 41 of the ICA Practice Directions;

(...)

At the hearing the Appellant will be authorized to rely on similar past incidents under the condition that it has notified to the ICA by Monday 13th June 2022, at 17:00 (French time), a written note presenting these incidents and to what extent the Appellant consider them relevant for the matter at stake (the French version of such written note shall be notified in compliance with Paragraph 41 of the ICA Practice Directions), failing to which these elements would not be taken into account by the Court;

The FIA deadline to submit its Grounds in response is extended until Wednesday 22nd June 2022, at 17:00 (French time);

The FIA deadline to provide the Court with the videos of the race pursuant to Decision No.1 of the President of the Hearing remains on Monday 13 June 2022, at 17:00 (French time).”(emphasis in the original text)

17. On 13 June 2022, the Appellant filed the documents that it had been ordered to produce by the President of the Hearing in its Decision No. 2 and on the same day, the FIA provided a weblink to download the videos it intended to rely on in its Grounds for response, according to the President of the Hearing’s ruling in its Decision No. 1.
18. The FIA filed its Grounds in response on 22 June 2022 at 12:47 (English version) and on 26 June 2022 at 20:00 (French version).
19. On 24 June 2022, the Appellant requested the right to reply to the FIA’s Grounds in response, arguing in essence that:
- (i) In its Grounds in response the FIA raised a number of claims and arguments;
 - (ii) The Appellant was not represented by any legal counsel until 22 June 2022 and had not understood the specificities and requirements of the procedure before the Court, being therefore not in a position to present its case;
 - (iii) The Appellant did not file any Grounds for appeal and was only able to make comments on the videos which were eventually provided by the FIA in order to substantiate its case;
 - (iv) The Appellant has not the same means as does the FIA in terms of experience of such proceedings, legal resources and access to evidence;
 - (v) Due process and right to fair proceedings require the Appellant to be authorised to present a short written response to the FIA’s written submissions.



20. On 25 June 2022, the President of the Hearing issued its Decision No. 3 based in essence on the following grounds:
- (i) The Appellant received on 6 May 2022 a convening notice indicating precisely that it had until 25 May 2022 at 17:00 to submit its full Grounds for appeal;
 - (ii) On 25 May 2022 at 19:03, the Secretary General of the Court sent an email to the Appellant reminding it of the above deadline;
 - (iii) On the same day at 19:19, the Appellant asked if additional written submissions had to be made;
 - (iv) Five minutes later, namely at 19:26, the Secretary General of the Court replied that additional submissions were not mandatory but should the Appellant had wished to do so it should have done it within the set deadline;
 - (v) Eleven minutes later, namely at 19:37, the Appellant replied that he did not want to add any ground;
 - (vi) On 7 June 2022, the Appellant explained to the Secretary General of the Court that its letter sent on 3rd May 2022 and the French version of it sent on 3rd June 2022 constituted the Appellant's Grounds for appeal;
 - (vii) It was the Appellant's choice not to be assisted by a lawyer until 22 June 2022,
 - (viii) According to article 10.7.3 of the Judicial and Disciplinary Rules (JDR), *"after exchange of grounds for appeal and the response, the Parties shall not be permitted to submit further documents or evidence to the ICA, save in new or exceptional circumstances and with the permission of the President of the Hearing"*.
 - (ix) Based on the above, and considering that the Appellant did not put forward new or exceptional circumstances and would have in any event the opportunity at the hearing to challenge the FIA's claims and arguments contained in the latter's Grounds in response, the President of the Hearing denied the Appellant's request.

III. THE HEARING

21. At the outset of the hearing Mr. Koski explained that he was not familiar with this kind of procedure, that he was very busy from morning to evening in his team and that as the driver was a minor it is required, in his view, to provide him with an additional protection of his right to be heard. The Appellant explained through his lawyer that he had not realised that this would be such a proper legal procedure and that the videos would be reviewed during the hearing. The Appellant claimed that he had not had access to the evidence. The Appellant requested to be allowed to rely on the livestreams and on the video mentioned in the Report 98 related to the Incident No. 2.
22. The FIA submitted that the Appellant had not provided any type of supporting evidence by 25 May 2022 and had thus consciously renounced the right to provide additional evidence. Of the two videos produced by the Appellant after the President of the Hearing had allowed it to do so (as long as they related to previous incidents), one refers to Incident No. 2 and is therefore not compliant with the conditions set by the President



of the Hearing and the other one refers to a previous incident which is however completely irrelevant to the present case. The FIA stressed further that the Appellant did not request the FIA to have access to the evidence and was obviously trying on 25 May 2022 to amend, although belatedly, its Grounds for appeal dated 3 May 2022, just like it did when it produced its unfaithful French translation of its Grounds for appeal dated 3 May 2022. Based on the foregoing, the FIA asked the Court, as a preliminary request, to reject the new evidence produced by the Appellant after 3 May 2022.

23. The hearing was suspended, to enable the Court to take a decision on these preliminary requests.
24. After having considered the submissions made by the Parties, the Court decided to reject the evidence provided by the Appellant after 3 May 2022, particularly the two videos produced on 13 June 2022, together with the written submissions related to them. The Court confirmed in the meantime that the FIA had complied with the Decision No. 1 of the President of the Hearing. The Court thus decided that the case would be judged on the basis of the videos produced by the FIA with its response and that the Appellant would of course have the opportunity to comment on them during the hearing.
25. During the hearing, the Appellant put forward various observations on the Incidents No.1 and No.2 as a rebuttal to the FIA's response and based on the videos and pictures produced by the FIA, which were shown and commented on by the Parties during the hearing.
26. At the hearing, the Driver gave his version of Incidents No.1 and No. 2 explaining that he wanted to avoid any contact with the kart No. 206 and to keep the racing line. The Driver explained that in regard to Incident 2 kart No. 206 went on the dirty part of the track while he kept his line and that in his view he had not committed any wrongdoing.
27. The witnesses Nigel Edwards and Pasquale Lupoli, called by the FIA, explained what they had seen during the qualifying Heat E-F.
28. Mr Lupoli introduced himself explaining to the Court that he had been active in motorsport competition since 2007 and that his task involved spending his time on the track to follow the races and to report on any incident. He confirmed his witness statement. Regarding Incident No. 1, Mr Lupoli explained that his position on the track allowed him to have a good overview of the race. He confirmed that during Incident No.1, the Driver of kart No. 215 pushed kart No. 206 in the right back causing it to go wide in the exit of the corner, thereby losing position. This created a dangerous situation for the rest of the drivers, due to the drastic reduction of speed of kart No. 206 caused by the contact and that at that moment of the race, the drivers were very close. Mr Lupoli explained further that kart No. 206 went partially off onto the grass raising some dust and all the other drivers had to face this unexpected situation suddenly, at



the exit of a fast corner. For those reasons, Mr Lupoli reported the Incident No. 1 to the race director.

29. Mr Lupoli conceded that when it came to Incident No. 2, which took place four minutes after Incident No. 1, he did not have a good overview of the racing line. He therefore had to consult the available videos to understand exactly what had occurred. However he confirmed that he had not seen the live stream video. Commenting on the live stream videos displayed during the hearing, Mr Lupoli explained that kart No. 215, which was trying to overtake kart No. 206, forced the latter off the track following a side-by-side contact without leaving enough space for kart No. 206. At this point, kart No. 206 lost control, spinning to the right and then stopped on the fast line of the start finish facing straight the opposite way of the track. Mr Lupoli then confirmed further the content of his witness statement where he explained that this situation had caused many drivers to take emergency manoeuvres to avoid kart No. 206. Kart No. 276 did not manage to avoid a frontal collision with kart No. 206. The driver of kart No. 206 tried to get out of his kart but immediately fell due to a broken leg. Mr Lupoli confirmed at the hearing that he had not seen any incident between the karts No. 215 and 219. He explained further that all the officials who were involved with the video analysis of the facts concluded that this Incident No. 2 had to be reported. Answering the Appellant's questions based on the videos shown during the hearing, Mr Lupoli explained that regarding Incident No. 1 the latter took place outside the scope of the cameras and could therefore not be seen on the videos produced by the FIA. As for the Incident No.2, Mr Lupoli confirmed that he had not seen this Incident with his own eyes but had to review the videos. When he was presented with the livestream at the hearing, he confirmed that it was the first time he had seen it. Having watched the livestream and answered the questions asked by the Appellant and the Court, Mr Lupoli confirmed that in his view, it was kart No. 215 which was trying to overtake kart No. 206 and that the kart No. 215 was responsible for the Incident. Mr. Lupoli considered that there had been no contact between the karts No. 219 and 206.
30. Mr Edwards confirmed during the hearing the content of his witness statement and that he did not witness Incident 1. He explained about Incident No. 2 that he had seen the two karts exiting the corner in the front quarter of the field, one being on the outside line and the other close alongside. Suddenly both karts touched, one spinning infield and off track, the other spinning backwards on the main straight, stopping and facing the traffic pretty much directly on the racing line. Several karts could avoid it but one could not, causing a massive impact where one kart veered off to the infield and the other stopped in the middle of the track. Given the situation, Mr Edwards explained that he immediately called for the Red Flag and put the Medical Services on urgent stand by. When asked by the Court about the state of the track at the moment when the Incident No. 2 took place, Mr Edwards confirmed that it could very well be that there was dirt outside of the racing line making the track, in this area, more slippery.



IV. REQUESTS OF THE PARTIES

31. The Appellant asks the Court in its Notification of appeal to set aside the Decision of the Stewards and to confirm that no penalty should be imposed on its Driver or, if the Court should find that a contact indeed took place, to impose a 10 seconds penalty or only a disqualification from the heat.

32. In its Grounds in response, the FIA requests the Court:

“i. to reject the Appellant’s correspondence dated 7 June 2022 and the videos and written submission provided on 13 June 2022,

ii. further to Article 10.9 of the JDR, to dismiss the Appellant’s appeal and to confirm the Steward’s Decision n° 138 in its entirety; and

ii. [to] order the Appellant to pay the costs of the appeal referenced in Article 11.2 of the JDR.”

V. ADMISSIBILITY OF THE APPEAL BEFORE THE COURT

33. The Court notes that the Appellant brought its appeal in accordance with the provisions of the 2022 Judicial and Disciplinary Rules (the “JDR”).

34. The Court also considers that it has jurisdiction to hear this appeal.

35. Therefore, the Court deems the appeal admissible, which is undisputed.

VI. ON THE PROCEDURAL SUBMISSIONS

36. Repeating in essence the submissions made in its request to be allowed to file a reply, the Appellant claimed at the outset of the hearing that its right to be heard had been violated and that it had not been granted the possibility to validly present its case before the Court.

37. The FIA contended that the Appellant had all the necessary means to submit detailed grounds for appeal within the set deadline and that it had been its choice not to do so. Referring to Article 10.7.3 JDR, the FIA claimed that the Appellant could not submit new arguments before the Court but only reply, during the hearing, to the FIA’s submissions.

38. The Court decides that the Appellant reacted belatedly and cannot now blame others for its own mistakes. Even though the Appellant had been duly informed by the Secretary General of the Court of its rights and of the relevant deadlines to active them by means of the convening notice sent on 6 May 2022, it was its own decision not to use



its right to submit complete Grounds for appeal and to simply rely on the content of its Notification of appeal.

39. The rules set under Article 10.7.3 JDR are perfectly clear. As the Appellant does not make any argument that could be considered to be new or exceptional circumstances that would allow it to complete its written submissions after the deadline clearly set to it to do so, the Appellant cannot now claim that its right to be heard has been violated.
40. Those rules of Article 10.7.3 JDR are clear and fundamental rules that must be strictly applied in order to ensure a smooth and fair proceeding before the Court.
41. The principle of one exchange of written proceedings cannot suffer any other exception than the one provided under Article 10.7.3 JDR which is clearly not met in the present case.
42. The Court notes further that those rules are not new and have been strictly applied by previous judging panels to the complete satisfaction of the Parties which stood before them.
43. Notwithstanding the foregoing, the Court notes that the Appellant had the opportunity during the hearing to comment on the videos brought by the FIA. Those videos offered all the details necessary to assess the two incidents which constitute the essence of the present case, so that, notwithstanding the above procedural issues, the Court finds that the Appellant was in any event fully able to exercise its right to be heard.
44. The Court makes otherwise reference to the Decisions No. 1 to 3 of the President of the Hearing and to the Court's decision taken during the hearing as reflected in paragraphs 21 to 24 of this decision.

VII. ON THE SUBSTANCE

a) *Arguments of the Parties*

45. The Appellant puts forward in essence the following grounds in support of the appeal:
 - (i) The Appellant claims first in its Notification of Appeal, that there had been no contact during the overtaking reported in the Report 97, and that the Stewards allegedly did not look at the videos related to this first incident as they were "*only interested about the Report 98.*"
 - (ii) According to the Appellant, the incident reported in Report 98 was due to an unforeseeable move of kart No 206 that the Driver could thus not anticipate or expect. Once he had realised what was happening, the Driver tried to leave space for kart No 206, whose driver eventually lost control which led to the incident, for



which the Driver of Kart No 215 was therefore not responsible. The Appellant claims that the Stewards had confirmed *“that no contact was done and there was a gap between drivers. Kart 206 is all 4 wheels on track when he loses grip and starts to slide and in the end spin.”*

- (iii) The Appellant concludes in its Notification of Appeal that *“both reports are wrong and no penalties should be given.”*
- (iv) During the hearing, the Appellant confirmed the statements made in its Notification of Appeal, putting forward that the kart 206 was trying to overtake by the outside on a dirty and slippery part of the track and that it had never taken the advantage during the whole overtaking attempt.

46. The FIA contends in its Grounds in response, in essence, the following:

- (i) The FIA notes first that the Appellant did not provide any material with its Notification of Appeal and requests therefore, based on article 10.7.1 JDR, that any document produced by the Appellant that was not provided or clearly referred to with its Notification of Appeal, should be disregarded.
- (ii) The FIA then claims that the two videos provided by the Appellant on 13 June 2022 and the explanations thereof do not prove that the Driver did not make contact with kart No. 206 in the first lap and did not force kart No. 206 off the track.
- (iii) As to the alleged procedural faults of the Appellant, the FIA puts forward that the Appellant had not provided any evidence with its Notification of Appeal and did not meet the instructions of the President of the Hearing as it allegedly did not provide a written note on past incidents it wanted to rely on. In the FIA's view, the *“Video 2”*, which refers to another competition, is irrelevant and should be disregarded as well as the *“Video 1”*, which has been provided belatedly. Both videos, to the FIA's view, do not refer to past incidents and do therefore not comply with the order of the President of the Hearing in its Decision No. 2.
- (iv) Concerning the correspondence dated 7 June 2022, the FIA argues that the French version is not a strict translation of the Notification of Appeal and that the English version of such correspondence contains additional arguments that were not included in the Notification of Appeal. Both versions of this correspondence should thus be disregarded.
- (v) Going now to the merits of the case and regarding the Incident No. 1, the FIA refers to the Report 97 and to the videos referred to in the reports, and contends that the Driver tried to overtake kart No. 206 but *“overshot his braking point and ended up colliding with kart No. 206”* which, as a consequence lost two positions. The FIA thus claims that the Incident No. 1 is undisputable.
- (vi) As to the Incident No. 2, the FIA explains that the videos show that the Driver was aware of the presence next to him of the kart No. 206 as the karts' front fairings



were aligned with each other, notwithstanding the sound of the kart No. 206's engine that the Driver must have heard according to the FIA.

- (vii) The FIA stresses further that Article 3.6.2 CDC does not prohibit overtaking from the outside, meaning that the kart No. 206 did not do any prohibited manoeuvre, and notes that both karts decelerated allegedly due to the *"forceful side-by-side situation created by kart n°215"*. According to the FIA, this deceleration shows that *"kart n°206 was trying to avoid any problem with kart n°215."*
- (viii) The FIA then asserts that in Incident No. 2, the Driver of kart No.215 changed his normal path and thus pushed the kart No. 206 outside, as wide as possible, leaving completely the racing line, which caused the driver of the kart No. 206 to lose the control of his kart which led to the frontal contact between karts No.206 and No. 276, and the injury and hospitalisation of both drivers.
- (ix) The FIA stresses that the driver of the kart No. 206, Mr Bondarev, was badly injured in his left leg, had to undergo two surgeries, with a serious risk he will not be able to resume racing this season, whereas the driver of kart No. 276, Mr Dahlstrom, had to undergo two surgeries to his right leg and suffered injuries to his right arm as well. He had to be in a wheelchair for two weeks and will not be able to participate in any motorsport activity until at least September 2022.
- (x) The FIA rebuts the allegedly belated submission of the Appellant regarding a potential contact between kart No. 219 and its kart No. 215 which the Appellant claims to explain *"why kart 206 believes that there was an intentional movement"* from its Driver. The FIA argues that the videos produced by it as opposed to those produced by the Appellant prove that no contact took place between those two karts No. 219 and No. 215. The FIA adds that such an incident would have caused kart No. 219's front fairing to move, which had not been observed by any official during the Competition.
- (xi) Based on all the above, the FIA claims that the Driver of Kart No 215 and, as a consequence, the Appellant breached article 3.6.2 CDC and that the sanction imposed by the Stewards was proportionate, given the dangerous nature of the incidents caused by the Driver, the speed of the karts, namely more than 110 km/h at the moment of Incident No. 2, and the place where the incidents took place as well as the harsh consequences of those incidents on the health of two drivers. The FIA asserts that the Driver provoked the incidents on purpose and showed no remorse, nor gave an apology.
- (xii) The FIA thus contends that the Stewards did not abuse their discretionary power when imposing on the Driver and the Appellant one of the most severe sanctions provided under article 12 of the Code, reminding the Court that such a penalty had been imposed in previous cases.



b) Applicable Regulations

47. The applicable rules are the FIA Regulations in force at the time when the Competition took place, namely on 30 April 2022.
48. As a result, the applicable regulations relevant to the merits of the present case are the 2022 Editions of the Code, the 2022 International Karting Code of Conduct (CDC), the 2022 CIK-FIA General Prescriptions (GP) as well as the 2022 FIA Karting European Championship-Junior Sporting Regulations (SR).
49. As to the Procedural Rules, and since the Notification of appeal was filed on 4 May 2022, the applicable regulations are the 2022 Edition of the FIA Judicial and Disciplinary Rules (JDR). As determined under article 14.4 JDR, French law applies to the present proceedings.
50. Neither the Appellant nor the FIA dispute the above.

c) Conclusions of the Court

51. At the request of both Parties and for sporting calendar reasons, the operative part of the present decision was notified beforehand to the Parties on 4 July 2022.
52. Having carefully examined the written submissions made by the Appellant and the FIA, and the submissions and evidence addressed at the hearing, the Court rules as follows.

a. On the question of the breach of article 3.6.2.b CDC

53. It is undisputed that the Appellant is bound by the CDC as well as the other FIA Regulations mentioned under letter b) above.
54. The Court notes in particular that the Appellant signed the entry form of the Competition which contains the following statement to be signed by each Competitor:

"I read the Supplementary Regulations issued for this competition and agree to be bound by them and by the FIA Karting General Regulations, the International Karting Regulations and the FIA International Sporting Code in force."

55. The Court stresses further that article 2 SR provides that *"all Drivers, Entrants, and Officials participating in the Championship undertake, on behalf of themselves, their employees and agents, to observe all the provisions of the International Sporting Code ("the Code"), the Code of Driving Conduct on Karting Circuits, the Karting Technical Regulations ("the Technical Regulations"), the General Prescriptions applicable to the FIA*



Karting International Competitions and Championships, Cups and Trophies (“the General Prescriptions”), the Specific General Prescriptions applicable to the FIA Karting International Competitions and Championships, Cups and Trophies (“the Specific Prescriptions”), the Supplementary Regulations of the competition concerned and these Sporting Regulations.”

56. The Stewards considered that the Appellant and the Driver committed a breach of article 3.6.2.b CDC, which reads as follows:

“Overtaking, according to the circumstances, may be carried out either on the right or the left. However, manoeuvres liable to hinder other Drivers such as more than one change of direction to defend a position, deliberate crowding of karts beyond the edge of the track or any other dangerous change of direction, are strictly prohibited. Any Driver who appears guilty of any of the above offences will be reported to the Stewards of the meeting.”

57. The Court notes that the Stewards did not mention in their Decision if each incident justified a sanction but only referred to both incidents before deciding on the sanction to be applied against the Appellant and the Driver.
58. In the Report 97 on Incident No.1, it is mentioned that the Driver did a “*contact driving*” after which kart No. 206 lost position and kart No. 215 “*made chaos behind him*”.
59. In the Report 98, it was determined that the Driver performed a “*dangerous driving*” which caused a serious accident and injured two drivers.
60. As mentioned by the FIA in paragraph 96 of its Grounds in response, “*within the context of kart racing, small contacts are an inherent part of the sport and happen mostly due to the very close vicinity of vehicles on a relatively narrow track.*” The FIA then adds that “*using one’s bodywork to “lean” onto an adversary to force a pass, at the detriment of the other constitutes dangerous driving.*”
61. The Court notes that it is mentioned in Report 97 that the Driver did a “*contact driving*” during Incident No. 1, whereas a “*dangerous driving*” was mentioned in Report 98. The Court notes further that in its Grounds in response, the FIA refers exclusively to Incident No. 2 in order to justify the sanction imposed on the Appellant and its Driver.
62. At the hearing, although Mr Lupoli confirmed the content of his witness statement on Incident No. 1, he indicated that the videos projected at the hearing by the FIA did not show Incident No.1, so it was not possible for the Court to get visual information of the Incident No. 1.
63. After having carefully reviewed Mr Lupoli’s statements be it in writing or at the hearing, the Court finds that Incident No. 1 was not as such sufficient to sanction the Driver and could only be a possible source of interpretation of the Driver’s character, when it comes to the analysis of more serious incidents, such as Incident No 2.



64. The Court thus concludes that the Incident No. 1 shall be taken into consideration only if it comes to the conclusion that the Driver committed a breach of article 3.6.2.b CDC during Incident No.2. In that case, Incident No. 1 might potentially have an impact when it comes to the type of sanction to be imposed on the Driver.
65. Based on the ICA constant jurisprudence, the Court acknowledges that the Stewards are in principle in the best position with regards to their best knowledge of the relevant facts in a given time and a given place, which the Court cannot obviously have, to assess which particular incident committed by a particular driver consists in a breach of the applicable regulations and has to be sanctioned or not (see notably ICA 2018-01 [*M-Sport Ford*] par. 22 and 23), it being reminded that the Court is not bound by its previous decisions.
66. Notwithstanding the foregoing, the Court notes that, as clearly stated by Mr Lupoli in his written witness statement and confirmed by him during the hearing and as mentioned in the report of the Judge of Facts, in the present case the Stewards and the various FIA officials had access to the videos which were at their disposal after the event to assess whether the Driver had breached the regulations or not. The Court however had access to live stream video provided by the FIA, which was not available to the Stewards as confirmed during the hearing by Mr Lupoli, the FIA official who reported the Incident No. 2.
67. The Court therefore had a better source of information with the live stream video, which could be played and commented by the Parties various times during the hearing, the Court finds that, due to the particular circumstances of this present case, it is this time the Court which has the best knowledge of the facts and not the Stewards.
68. Based on the foregoing, the ICA constant jurisprudence referred to above must be tempered in the framework of the present case.
69. After having carefully reviewed the various videos available and after having considered the comments made on those videos by the Appellant during the hearing and by the FIA in its Grounds in response as well as during the hearing and after having listened to the statements made by the Driver and the witnesses, the Court concludes that the Driver did not push kart No. 206 out of the track and that there was no move of kart No. 215 that could be regarded as a breach of Article 3.6.2.b CDC. If it is true that the Driver did partly leave the driving line, it is not clear at all that he did it in order not to leave enough space to kart No. 206 to remain on the track.
70. The Court in relation to Incident 2 is not satisfied that the Driver's actions approaching the corner were deliberate to push away kart No. 206. The Court considers that kart No. 215 had the right to the corner at the moment when kart No. 206 lost control.
71. The Court notes as well that kart No. 215 was not examined after the event, which is regretful, as a proper examination of the kart might have provided additional evidence supporting one or the other version of the incident.



72. Based on all the above, the Court finds that both Incident No 1 and No. 2 were pure racing incidents and that the Driver did not commit any breach. As a consequence, no sanction should therefore be imposed on the Appellant.
- b. On the question of the sanction and its proportionality*
73. Having concluded that the Driver had not committed a breach of article 3.6.2.b CDC and that no sanction should thus be imposed on the Appellant, the submissions of the Parties related to the sanction and its proportionality shall not be examined.
74. The Court stresses however that the Incident No. 2 was tragic and had horrific consequences on the drivers of Karts No. 206 and 219. If anyone had been responsible for this incident, he or she should have then been sanctioned and a disqualification would have been, to the Court's view a proportionate sanction.
75. However, as mentioned above, the Court concludes that the Driver was not guilty and one must accept that tragic events can occur in the context of motorsport without anyone being responsible.
76. Based on all the above, the Court upholds the appeal and quashes the Decision of the Stewards.

VIII. COSTS

77. Considering the outcome of the proceedings, the Court leaves it to the FIA to bear all the costs, in accordance with Article 11.2 JDR. The deposit paid to the Court shall be fully reimbursed to the Appellant.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Upholds the appeal on the merits and quashes Decision No. 138 dated 30 April 2022 of the Stewards of the Zuera Competition (Spain) counting towards the 2022 FIA Karting - OKJ European Championship;**
- 3. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 4. Leaves it to the FIA to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 5. Orders the reimbursement in full to Koski Motorsport of the deposit paid to the Court;**
- 6. Rejects all other and further conclusions.**

Paris, 4 July 2022

The President

Riccardo La Cognata