



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by Mr Vladislav Mikhaylov

Against the

**Decision No. 182 dated 3 September 2022 of the Stewards of the Le Mans Event
counting towards the 2022 FIA Karting Academy Trophy**

Case ICA-2022-05

Hearing of 8 November 2022

Decision of 28 November 2022



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), which comprised Mr Philippe Narmino (Monaco), who was designated President, Mr Michele Corradino (Italy), Mr Thierry Julliard (Switzerland) and Mr Martin Maisner (Czech Republic), held a hearing at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris, on Tuesday, 8 November 2022.

Prior to the hearing, the Court received and considered submissions and attachments thereto made by Mr Vladislav Mikhaylov and the FIA.

The following persons attended the hearing:

on behalf of the Appellant, Vladislav Mikhaylov:

Mr Vladislav Mikhaylov, Appellant
Mr Timofey Mikhaylov, Driver (via videoconference)
Mr Andriy Honta, Witness (via videoconference)

on behalf of the FIA:

Ms Alejandra Salmerón García, Senior Legal Counsel
Ms Prisca Mutesi, Senior Legal Counsel
Mr Simone Perego, Karting Championships Manager
(via videoconference)
Mr Pasquale Lupoli, Deputy Race Director
Mr Karl Janda, Technical Director (via videoconference)
Mr Jamie Arscott, Judge of Facts (via videoconference)
Mr Ross Upton, Judge of Facts (via videoconference)
Mr Marcello Somera, Scrutineer (via videoconference)

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 8 November 2022, set out oral arguments and addressed the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation 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 translation.

I. REMINDER OF THE FACTS

1. On the occasion of the FIA Karting Academy Trophy held in Le Mans on 3 September 2022 (the “Competition”) counting towards the 2022 FIA Karting Academy Trophy (the “Trophy”), the Stewards received Report No. 96 (the “Report”) issued by Mr Marcello Somera, one of the three scrutineers of the Competition.
2. In his Report, sent at 11:52, Mr Somera stated that, in the Qualifying Heat B-C, the mechanic of driver Timofey Mikhaylov (the “Driver”), who was driving kart No. 547 (the “Kart”) *“was found working in the Pre-Grid”*.
3. On the same day, the Appellant and the Driver were summoned by the Stewards by means of a communication issued at 12:04, and a hearing was held at the Stewards’ office.
4. After having analysed the information in their possession, and heard the Appellant and the Driver, the Stewards found that the Appellant’s mechanic had worked on the Kart on the Pre-Grid in breach of Article 2.19F of the 2022 CIK-FIA General Prescriptions (the “GP”). They thus issued Decision No. 182 (the “Decision”), by means of which, they disqualified the Driver from Qualifying Heat B-C, in which he had finished in 8th position.
5. The Decision was notified on 3 September 2022 at 12:33 to the Appellant, and published at 12:34.
6. The Appellant notified its intention to appeal on the same day at 13:18, and the penalty provided in the Decision has therefore been suspended.
7. Due to the suspensive effect of the intention to appeal, the Driver received 8 points (i.e., ‘penalty points’ used to determine the starting grid of the Final after all the Qualifying Heats have been raced). This was due to him finishing in 8th position in the Qualifying Heat B-C, leading to a total of 27 penalty points, when added to the penalty points received by the Driver in the two other Qualifying Heats. The Driver thus qualified in 16th position on the starting grid of the Final that took place on 4 September 2022.
8. Ultimately, the Driver did not finish the Final, and thus no Final points counting towards the Championship standings were awarded to him.



II. PROCEDURE BEFORE THE COURT

9. The Appellant filed its Notification of Appeal on 6 September 2022, and its Grounds for Appeal on 26 September 2022.
10. On 24 October 2022, the FIA filed its Grounds in Response to the Grounds for Appeal.

III. THE HEARING

11. At the outset of the hearing, the Parties confirmed the content of their written submissions and explained in detail the circumstances under which the Appellant's mechanic, Mr Andriy Honta, had intervened on the Kart while it was on the Pre-Grid.
12. In essence, the Appellant explained that following a change of weather conditions, the officials had allowed all participants to work on the karts and to change their tyres for a period of 10 minutes on the Pre-Grid, which was declared as a "Start Servicing Park" or "Repair Area" for the said 10 minutes.
13. He claimed that this exceptional decision generated a lot of confusion, and the information provided by the officials in the course of the 10 minutes was misleading, or at least insufficient, such that Mr Honta intervened on the Kart considering, in good faith, that he still had time to do so. According to the Appellant, his mechanic had not only acted in good faith, but had indeed intervened within the 10-minute window.
14. The FIA, relying on the written witness statements of six of its officials, who all confirmed their statements during the hearing, explained that nobody, in particular, the Appellant, had raised any claim against the decision taken by the officials for safety reasons. Moreover, the necessary measures had been taken in order to ensure that the participants understood the situation and acted in accordance with the regulations. Thus, the Appellant's mechanic knew that he was intervening outside the 10-minute window set by the officials, and therefore, at a time when the Pre-Grid had "recovered" its status, meaning that it was strictly forbidden to carry out any work and/or set-up activities on the Kart, excluding tyre pressure.
15. At the hearing, the Driver confirmed the content of his written witness statement, which was notified the day before the hearing upon request of the FIA. The Driver explained that Mr Honta had intervened on the Kart a few seconds after the officials announced that there were 30 seconds remaining within the 10-minute window. In the Driver's view, the mechanic had intervened within the 10-minute window.
16. During his testimony before the Court, Mr Honta confirmed that in his view, he had intervened within the 10-minute window and that, in any event, no official had indicated that the ten minutes had passed, nor had they informed him in particular that he was not allowed to intervene on the Kart.



17. Mr Janda, the FIA Technical Delegate, confirmed before the Court that he had informed all the mechanics that they had a 10-minute window to proceed with the change of tyres and other work on the karts on the Pre-Grid, which was to be considered as the “Start Servicing Park/Repair Area” during those 10 minutes, after which no work would be possible, in accordance with the regulations applicable to the Pre-Grid.
18. Mr Janda further explained that he had walked through the Pre-Grid, and announced orally the remaining time for the mechanics to perform their work on the karts. He explained that no board had been used to communicate the information, but that he had made four oral announcements in English indicating that there were respectively 5 minutes, 3 minutes, 1 minute and finally, 30 seconds remaining.
19. Mr Janda explained that he had been checking how much time remained thanks to a clock located on the Pre-Grid which was standing on a two-metre high tripod. Mr Janda explained that he had made those checks together with the Judges of Facts, Mr Upton (who had been making the same announcements on the Pre-Grid), and Mr Arscott.
20. Mr Arscott recounted the same facts as Mr Janda, and explained that he had seen Mr Honta walking on the Pre-Grid with a wheel gun after the 10-minute window had closed. Mr Arscott explained that he had told Mr Honta not to use this wheel gun, that the mechanics had heard him perfectly, but that he had nevertheless decided to ignore him, and work on the Kart. Mr Arscott then explained that he had informed Mr Upton of the situation.
21. Mr Upton confirmed at the hearing that Mr Arscott had indeed informed him of what had happened between the latter and Mr Honta.
22. The Appellant also made comments at the hearing on the video provided by the FIA, and explained that, in his view, the fact that Mr Honta’s intervention had taken place within the 10-minute window was evidenced by the timeline of said video. As part of this argument, the Appellant showed various sequences of the video to the Court.
23. Just prior to his closing statements, the Appellant, who, at his choice, was not assisted by a lawyer during the entire procedure, confirmed that he requested the Court to set aside the Decision and to confirm that no penalty should be imposed on its Driver.

IV. REQUESTS OF THE PARTIES

24. As confirmed at the hearing, the Appellant asks the Court to set aside the Decision of the Stewards, and to rule that no penalty should be imposed on the Driver.

25. In its response to the Grounds for Appeal, the FIA requests the Court:

“i. further to Article 10.9 of the JDR, to dismiss the Appellant’s appeal and to confirm the Stewards’ Decision n° 182 in its entirety; and

ii. 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

a) Submissions of the Parties on the Appellant’s legal interest to file his Appeal

26. The FIA explains in essence that the outcome of the Appeal would have no “sporting impact”, as the Driver had 27 penalty points in total after the Qualifying Heats, including 8 penalty points received after Qualifying Heat B-C, in which the Driver had finished in 8th position. Given the above, the Driver was classified in 16th position after all the Qualifying Heats and before the Final.

27. According to the FIA, if the Appellant had not declared its intention to appeal, the sanction issued by the Stewards would have applied, and the Driver would have been sanctioned immediately with 36 penalty points instead of 8, which would have led to a total of 55 penalty points instead of 27.

28. As only 36 drivers can participate in the final phase, and considering the outcome of the three Qualifying Heats, the FIA explains that the Driver would thus simply not have qualified for the Final.

29. However, thanks to the suspensive effect of the intention to appeal, the Driver did ultimately participate in the Final. But, as he did not manage to finish the race, no points counting towards the Championship standing were awarded to him.

30. Based on the above, the FIA argues that the Appellant has no legal interest to file an Appeal, and that the Appeal should be rejected on these grounds.

31. The FIA puts forward two written arguments to support its point of view:

(i) firstly, Article 10.1.1.a of the Judicial and Disciplinary Rules of the FIA (“JDR”) provides:



“The appeal must be notified to the GSC by the FIA, the FIA Member, the person who is the subject of a decision of the IT or of the CCAP or any other person who has a legal interest to act [underline added]. (...).”

- (ii) secondly, Article 31 of the French Civil Procedure Code (“FCPC”) provides:
“The action is opened to all those who have a legitimate interest in the success or rejection of the claim, subject to the cases in which the law attributes the right to act only to persons whom it qualifies to raise or challenge a claim or to defend a specific interest.”

32. At the hearing, the Appellant rebutted the FIA’s submissions claiming that he had a legal interest to have the sanction dismissed, and a legal interest to know whether or not his mechanic had done something wrong.

b) Conclusions of the Court

33. First and foremost, the Court recalls that according to Article 14.4 of the JDR:
“The applicable law is the regulatory texts of the FIA (Statutes, Regulations, other binding rules), as well as French law.”
34. In the opinion of the Court, Article 14.4 of the JDR means that the provisions of French law only apply on a complementary basis, either when obviously applicable to the issue at stake if not already covered by the FIA regulations, or if the FIA regulations explicitly refer on French law on a given matter.
35. The French Civil Procedure Code only explicitly covers proceedings before French state courts, and not those before private organisations’ internal bodies (such as the FIA International Court of Appeal). Furthermore, Article 10.1.1.a of the JDR already deals with the issue of a “legal interest to act” before the ICA. The Court therefore concludes that the French Civil Procedure Code, which only applies to the proceedings before the ICA on a complementary basis, is not applicable to the issue at stake.
36. That being said, the Appeal is directed against a decision issued by the Stewards, who disqualified the Appellant’s Driver from the Qualifying Heat B-C of the Competition.
37. Based on the above, the Court finds that the Appellant’s “legal interest” lies in the impact of the disqualification on his personal situation within the Competition and/or the Championship.
38. Should the sanction ultimately have no impact in this respect, the Appellant cannot claim that he has a legal interest in the Appeal within the meaning of Article 10.1.1.a of the JDR.
39. The Court rejects the two submissions of the Appellant on this issue.



40. Firstly, contrary to the Appellant's opinion, having the sanction annulled cannot as such constitute a legal interest. As the existence of a legal interest is a formal requirement set out under Article 10.1.1.a of the JDR, such legal interest is established depending on the potential consequences of the Appeal, in other words on the "material effect" of the Court's decision on the Appellant. This requirement is in general reflected in the operating part of the ICA decisions, in the following sentence: *"the Court orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling"*. If the ruling has no consequences on the sporting situation of the Appellant, the latter cannot claim any legal interest within the meaning of Article 10.1.1.a of the JDR.
41. Secondly, the findings of the Court on the proper or improper attitude of the Appellant's mechanic do not as such constitute a "legal interest" if these findings do not have any consequences on the Appellant's legal situation. The appeal procedure provided under the JDR is not granted to competitors to seek an opinion of the Court on an event that took place during a competition, but to get the Court to review *de novo* a decision issued by the Stewards and issue its own operating decision, which should affect the Appellant in its situation towards the competent Sporting Authorities. In other words, the opinion of the Court on whether or not, on 3 September, Mr Honta behaved properly and its opinion on the proper management of the situation by the FIA officials, do not as such have a legal effect. It is only the legal consequences of those findings on the legal situation of the Appellant which matter, in order to decide whether or not the Appellant has a legal interest.
42. In this case, it is undisputed that the Driver did not finish the Final of the Event in Le Mans, and that no points counting towards the Championship standings were awarded to him, as only the top 15 classified drivers are awarded points according to Article 19 of the FIA Karting Specific Prescriptions ("SP").
43. The Court noted however, that according to Article 19 of the SP, *"at each Competition, for the intermediate classification (established after the Qualifying Heats or Super Heat(s)), there will be an awarding of points to the top 10 classified drivers, according to the following scale: 10, 9, 8, 7, 6, 5, 4, 3, 2, 1."*
44. As evidenced in the Final Intermediate Classification ("FIC") of the Competition (so-called "Document 28.1 OFFICIAL" of the Le Mans Competition Results Booklet), the Appellant's Driver was ranked 16th, due to the suspensive effect of the intention to appeal filed by the Appellant.
45. This means that, even if the Decision was set aside by the Court, the Appellant would not get any points related to the FIC, as he was not among the top 10 classified Drivers after all the Qualifying Heats.
46. Having found that the Driver could not claim any points, be it at the Final, or on the basis of the FIC – even if the Decision was set aside, – the Court finds that the outcome of these appeal proceedings has no impact on the Appellant's legal situation, and that he therefore had no legal interest in these proceedings at the moment of the Notification of Appeal, as required under Article 10.1.1.a of the JDR.



47. The Appeal is thus inadmissible, and the Court shall not go further into the merits of the case.

VI. COSTS

48. Considering the outcome of the proceedings, the Court leaves it to the Appellant to bear all the costs, in accordance with Article 11.2 of the JDR. The deposit paid to the Court shall be kept by the Court, pending final calculation of costs.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the Appeal inadmissible;**
- 2. Leaves it to Mr Vladislav Mikhaylov to bear all the costs, in accordance with Article 11.2 of the JDR;**
- 3. Rejects all other and further conclusions.**

Paris, 28 November 2022

The President

Philippe Narmino