

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

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Referred by the Fédération Internationale de l'Automobile by virtue of
Article 185 of the International Sporting Code**

CASE

**Decision of the Italian National Court of Appeal concerning kart N°129,
competitor Jean-Yves Berthon, driver Nathanael Berthon, following the event
at La Conca run from 18 to 21 August 2005 counting in the
2005 CIK-FIA European Intercontinental A Championship**

Hearing of Monday 7 November 2005 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr José MACEDO e CUNHA (Portugal), elected President, Mr Vassilis KOUSSIS (Greece), Mr Harry DUIJM (Netherlands) and Mr Christian GROSJEAN (Switzerland),

Meeting in Paris on Monday 7 November 2005 at the Headquarters of the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris,

Ruling on the appeal lodged by the FIA against the decision of the Italian National Court of Appeal dated 21 September 2005 which, for infringing on the rights of the defence, annulled Decision N° 17 taken by the Panel of the Stewards of the Meeting on 21 August 2005 at the event run at La Conca, where the exclusion from the pre final was pronounced for kart N° 129, competitor Jean-Yves Berthon, driver Nathanael Berthon;

After hearing:

For the FIA, the appellant, Mr Pierre de CONINCK, Secretary General of the Sport Department, Mr Sébastien BERNARD, Head of the Legal Department, assisted by Mr Laurent ARNAUD, Head of the Technical Division at the CIK-FIA,

For the respondents, the Fédération Française du Sport Automobile (FFSA), represented by Mr Nicolas DESCHAUX, Secretary General, the Commissione Sportiva Automobilistica Italiana (CSAI) represented and assisted by Mr Ricardo CECCI, Lawyer with the Rome Bar, the competitor Jean-Yves BERTHON, the driver Nathanael BERTHON, assisted by Mr Andrea FIORAVANTI, Lawyer with the Lugano Bar,

For the knowledgeable parties, Mr Marcello SOMERA, Technical Delegate for the ICA category during the event, Mr Antonio VITIELLO, Chief Scrutineer of the event, Mr Gérard BRAUN, mechanic for the driver Nathanael Berthon, and Mr Lionel SANTAMATO of the GKS Team, who was heard as a witness,

After acknowledging that the due hearing of all parties had been respected, that the appeal was admissible, the rights of all parties having been duly examined both prior to the hearing and during the hearing itself, and the appellant, the competitor, the knowledgeable parties and the witness having been cross-examined and having

supplied detailed explanations and answers to questions when asked during the hearing by way of a system of simultaneous interpretation which did not receive the slightest criticism from the competitors ;

WHEREAS the FIA, the appellant, sought from the International Court of Appeal the quashing of the decision on the grounds that while the Italian National Court of Appeal had ruled on the form regarding the nullity of the decision of the Stewards of the Meeting on the grounds that the rights of defence of the competitor Berthon were obstructed, on the other hand the decision had not examined the substance of the case regarding the violation of the CIK-FIA regulations concerning the weight of the kart which was under the 150 kg (149,7 kg) as set out in Articles 1.3, 4.2 and 10 of the Karting Technical Regulations and 2.9.b of the General Prescriptions of the International Sporting Code ;

WHEREAS the respondents for their part essentially submit that there was conformity on all counts with the provisions referred to above, and that if at the initial weigh-in the kart weighed 149.7 kg, in other words 300 g under the weight required in the regulations, on the other hand, two other weigh-ins showed the kart's weight to be 150.1 kg, and consequently in conformity ;

WHEREAS before any discussion it is necessary to note that the appeal formulated by the FIA against the decision under consideration was lodged in accordance with the terms and within the time-limits set out in Articles 185 and 186 of the International Sporting Code, that being the 6 October 2005, before even the grounds for the decision were announced on 18 and 20 October 2005 ;

WHEREAS consequently, the appeal is admissible,

WHEREAS in this case and as to the form, the International Court of Appeal must, like the National Court of Appeal, note the absolute nullity of Decision N°17 taken by the Stewards of the Meeting at the event for obstruction of the rights of defence, and whereas the decision of the Stewards of the Meeting – which did not mention either the summoning or the hearing of the competitor – was only notified to the competitor at 15 :13 pm on the 21 August 2005 while the decision was handed down at 14 :09 pm, without the competitor being able to react ;

WHEREAS concerning the substance, the Italian National Court of Appeal did not examine the possible violation of the regulations concerning the weight of the kart

which may not have been in conformity, and declared on this subject that « *as far as the other matters sustaining this appeal and the related event, these don't need to be discussed being absorbed by the above-mentioned nullity*»;

WHEREAS the International Court of Appeal cannot let a decision which goes against the regulations go unsanctioned without considering the possibility of the existence of such a violation and which would be possible after an examination of the facts themselves;

WHEREAS in this case such consideration is required insofar as the ICA is able to assess the points not judged if it feels fair and proper to make a final ruling on the case;

WHEREAS, concerning the decision of the Stewards of the Meeting, the International Court of Appeal is in possession of the following documents which were discussed during the hearing :

- Firstly, a report on checks and weight calibration of scales which were used for weighing;
- Secondly, a report by Mr Marcello SOMERA stating that the weight of the kart was not in conformity;
- Thirdly, a report from the Chief Scrutineer, Mr Antonio VITIELLO, who noted that the weight of the kart and its driver was 149.7 kg instead of 150 kg and who stated at the hearing that after two successive weigh-ins which had revealed a weight of 149.7 kg and which was confirmed in the declaration made by Mr Berthon's own mechanic, other weigh-ins were carried out and revealed a weight of 150.1 kg ; but in this respect a final report from Mr Antonio VITIELLO noted that these weights were not in conformity because the competitor had « *approached the fence, drinking water and what's more, pocketed a mobile phone* »,

WHEREAS according to a report from Mr Sergio LO SARDO, the CSAI National Steward, the verified weight was noted at 149.7 kg; and whereas during the other weigh-ins the driver had drunk water and received from his mechanic a mobile phone which he had placed in the pocket of his driver's suit, this same report pointed out in addition that the Italian Scrutineer, Mr Mariano MARCUCCI, who was in charge of weighing, had confirmed the attempt at cheating by the driver with the help of his mechanic ;

WHEREAS the respondents' intention was to contest the declarations of these officials - after producing similar, undated attestations - by citing at the hearing Mr Gérard BRAUN, the driver's mechanic, and Mr Lionel SANTAMATO, competitor in the event,

WHEREAS, moreover, they produced an attestation from Mr Samuel CURRIDOR which was very close to the two other attestations previously cited, and which used identical terms;

WHEREAS finally they again produced an attestation dated 19 September 2005 addressed to the competitor BERTHON by Mr Jacques JACQUEMIN in which he states he was Scrutineer for an event outside the category, affirming simply that the swing in the scales went 300 g to the negative;

WHEREAS these attestations cannot be taken into consideration because they contradict the reports and declarations made by officials at the hearing, notably concerning the fact that the scales had been checked and calibrated with the proper weights revealing the scales were operating perfectly, and that in addition no anomalies were noted in the minutes concerning the weighing process during the different events run during this competition;

WHEREAS in addition, the loss of 1.8 liters of water mentioned by the competitor's mechanic could not have played any role because the water was not a part of the kart itself and had no justification for being considered necessary for reasons of *force majeure* in accordance with Article 12.A.c of the General Prescriptions;

WHEREAS from the examination of the documents and testimony supplied by the parties at the hearing, it is clear the minimum weight of 150 kg required by Article 10 of the Technical Regulations concerning the Intercontinental A Category was not respected;

ON THE FORM,

RULING on the appeal lodged by the FIA against the decision taken by the Italian National Court of Appeal;

CONFIRMS this decision insofar as the nullity of Decision N°17 taken by the Stewards of the Meeting is concerned;

ON THE SUBSTANCE,

QUASHES the decision because it did not rule on the violation of the regulations with regard to the weight;

RE-RULING on the matter,

STATES and RULES that the FIA's appeal is admissible;

ON THE SUBSTANCE,

NOTES the absence of a decision by the Italian National Court of Appeal, but solely concerning the weight of the kart, which did not conform to the regulations ;

STATES that kart N°129, competitor Jean-Yves BERTHON, driver Nathanael BERTHON, must be excluded from the prefinal race run at La Conca on the grounds it was in violation of Articles 1.3, 4.2 and 10 of the Karting Technical Regulations and Article 2.9.b of the General Prescriptions of the International Sporting Code ;

LEAVES it to the sporting authority to draw the conclusions of the present decision ;

LEAVES the costs to be borne by the respondents, in accordance with Article 190 of the International Sporting Code.

Paris, 7 November 2005

(signature)

The PRESIDENT