



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

**Appeals brought by Boutsen Ginion Racing (BGR) and ALL-INKL.COM Munich
Motorsport (AIMM) against
Decisions 30, 31 and 32 of 14 July 2018 taken by the Stewards
of the competition "Race of Slovakia" counting towards
the 2018 FIA World Touring Car Cup (WTCR)**

Cases ICA-2018-06, ICA-2018-07 and ICA-2018-08

Hearing of 17 September 2018 in Paris



The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), made up of Mr Philippe Narmino (Monaco), who was designated President of the Hearing, Mr Jean Luisi (France), Mr Fabio Mattei (Italy) and Mr Patrick Raedersdorf (Switzerland), met in Paris on Monday 17 September 2018 at the Fédération Internationale de l’Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeals brought by Boutsen Ginion Racing (BGR) and ALL-INKL.COM München Motorsport (AIMM) against Decisions 30, 31 and 32 of 14 July 2018, taken by the Stewards of the competition “Race of Slovakia” (the “Competition”) counting towards the 2018 FIA World Touring Car Cup (WTCR), whereby Cars 9 and 63 of BGR and 86 of AIMM were disqualified from the qualifying session on the Saturday of the Competition on account of their non-compliance with the maximum boost pressure values, for all three cars, and with the engine speed values for Cars 9 and 63, values decided by the FIA Touring Car Technical Committee on 13 July 2018 (Decision TC-R 2018/06).

The following persons attended the hearing:

On behalf of the Appellants:

Mr Dominik Greiner (Team Manager AIMM)
Mr Duncan Laycock (Technical Director AIMM)
Ms Olivia Boutsen (Co-owner of BGR)
Mr Olivier Lainé (Co-owner and Team Manager of BGR)
Mr Mads Fischer (Engineer with JAS Motorsport S.r.l.)
Mr Andrea Fioravanti (Lawyer)
Mr Massimiliano Maestretti (Lawyer)
Mr Markus Krug (Expert, chief engineer, WSC)

On behalf of the FIA:

Mr Pierre Ketterer (FIA Head of Regulatory, Governance & Legal Corporate Affairs)
Ms Delphine Lavanchy (Legal Counsel)
Mr Manuel Leal (FIA Technical Expert)

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 their written submissions and, at the hearing of 17 September 2018, presented their oral arguments and answered the questions put to them by the



Court. The Court also heard Mr Markus Krug and Mr Manuel Leal. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous interpreting. No objection to the competence or the composition of the Court, to any element of the fairness of the proceedings or of the hearing or to any element of the simultaneous interpreting was raised by any party.

Given the connection between them, and with the agreement of the parties, the three appeals have been combined so that they may be ruled on in one and the same decision.

Following the debates, the President of the Hearing informed the parties that the Court would hand down its decision on 24 September 2018.

REMINDER OF THE FACTS

1. On Saturday 14 July 2018, after the qualifying session preceding Races 2 and 3 of the Competition, the Stewards noted, on the basis of a report submitted by the FIA Technical Delegate, that the engine speed and boost pressure values of the Appellant BGR's Cars 9 and 63 exceeded the maximum values decided by the FIA Touring Car Committee on 13 July 2018 (Decision TC-R 2018/06).
2. The Stewards noted, on the basis of the same report, that the boost pressure values of the Appellant AIMM's Car 86 also exceeded these maximum values.
3. After having convened and heard the Appellants, the Stewards, via their Decisions 30, 31 and 32, pronounced the Disqualification of the cars in question from the qualifying session on the Saturday of the Competition, while allowing each of these cars to take part in Races 2 and 3 of the Competition from the back of the grid (the "Decisions").
4. Within the hour following the publication of the Decisions, the Appellants notified the Stewards of their intention to appeal against the Decisions and, within 96 hours of the notification of their intention to appeal, the Appellants confirmed their appeals before the Court.



PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

5. In their grounds for appeal, presented on 20 August 2018, the Appellants invite the Court to:

“a) Set aside the Decisions;

b) In the alternative, should the Court decide that the Appellants must nevertheless be sanctioned, the penalty of exclusion shall be replaced by a less severe sanction.

In any case:

c) In the event it does not decide to set aside the Decisions, mitigate the penalties inflicted with a more proportionate sanction;

d) Confirm that the Competitors were entitled to start in Race 2 and Race 3 from the grid position based on the results obtained in Qualifying 2 and therefore confirm the results obtained in both Race 2 and Race 3;

e) Order the return of the appeal deposit paid by the Competitors;

f) Refrain from making any order that the Competitors should pay any part of the ICA’s costs pursuant to Article 11.2 of the FIA Judicial and Disciplinary Rules;

g) Order the return of the sealed items deposited with the FIA and the removal of any additional seals placed by the FIA in relation to this appeal.”

6. The FIA, in its grounds in response dated 10 September 2018, invites the Court:

“to dismiss the Competitors’ appeals and confirm the stewards’ Decisions n° 30, 31 and 32 in their entirety, in application of Article 10.9 of the FIA Judicial and Disciplinary Rules; and

to leave it to the Appellants to bear the costs in accordance with Article 11.2 of the FIA Judicial and Disciplinary Rules.”

7. On 12 September 2018 the Appellants, on the basis of Article 10.7 of the Judicial and Disciplinary Rules (“JDR”), asked the Court for authorisation to submit further evidence, namely (i) two documents containing data/tables relating to the Appellants’ cars and (ii) a copy of the minutes of the Touring Car Commission meeting of 17 July 2018.

8. Invited by the President of the Hearing to present its observations on this request, on 14 September 2018 the FIA contested the admissibility of these documents.



9. At the beginning of the hearing, and having heard the arguments of the parties on this subject, the Court decided not to allow the production of the documents in question, on the grounds that the Appellants' request to produce evidence that was already available at the time of lodging the grounds of appeal did not rely on "*new or exceptional circumstances*" in the sense of Article 10.7 JDR.

ADMISSIBILITY OF THE APPEAL

10. The Decisions were notified to the Appellants:
 - On 14 July 2018 at 18.33 concerning Decision 30;
 - On 14 July 2018 at 18.49 concerning Decision 31;
 - On 14 July 2018 at 18.27 concerning Decision 32.
11. The Appellants notified their appeals before the Court on 18 July 2018 at 15.15 and 15.49, i.e. within the time limit set by Article 10.3.i.a JDR. The notification of appeal included all the elements required by Article 10.1.1. JDR and the Appellants also paid the appeal deposit within the given deadline.
12. Taking into account the above, the Court considers the appeal admissible, which is not contested.

ON THE SUBSTANCE

a) *Arguments of the parties*

13. The Appellants submit the following 6 grounds for appeal:
 - (i) The FIA's new balance of performance table (the "BoP Chart") does not apply as it has not been agreed with WSC (the owner of the TCR concept and trademark), and cannot be used by the Technical Delegates and by the Stewards to assess the Competitors' cars' conformity with the regulations applying to the Competition;
 - (ii) Compliance with the new parameters on "maximum boost pressure" established in the FIA's New BoP Chart would have resulted in the Competitors' cars being in breach of the 2018 WTCR Technical Regulations, since it would have required the reprogramming of the electronic control Unit (ECU) of the car's engine, which is strictly prohibited;



- (iii) The FIA never considered the BoP parameters on “maximum boost pressure” contained in its issued TC Committee Decisions but not agreed with WSC as applicable to assess the cars’ conformity. Indeed, at the first 5 races, it did not penalise the cars for running according to parameters, defined in the TCR Technical Bulletins, which were higher than those appearing in the BoP Charts published by the FIA. The FIA is therefore estopped to claim now, contrary to its previous consistent and long-standing practice, that parameters on “maximum boost pressure” contained in its BoP Charts apply;
 - (iv) The FIA never checked the cars’ compliance with the “maximum engine speed” parameters as it correctly considered that compliance was guaranteed by the certified ECU. The FIA is therefore estopped to claim now, contrary to its previous consistent and long-standing practice, that a violation of the “maximum engine speed” not prevented by a certified ECU shall be sanctioned, especially since these maximum figures are regularly exceeded during the races despite the ECU;
 - (v) The FIA’s New BoP Chart has not been published by the Stewards as expressly required by the 2018 WTCR Sporting Regulations;
 - (vi) Alternatively, the applicable BoP Chart was/is not clear, and its application was not possible for the Competitors and therefore it was unfair and/or disproportionate to disqualify them.
14. The FIA begins by stating that it is the sole organiser of the WTCR and that therefore it alone has the task of enforcing the sporting and technical regulations applying to that competition. It has therefore put in place a WTCR Technical Passport, and it is the FIA’s responsibility to optimise the potential equality of performance between the cars in the competition, and this through the intervention of the FIA Technical Committee (the “TC”), in accordance with Article 80 of the WTCR Regulations.
15. The exchanges between the FIA and WSC provided for in the regulations do not imply that WSC has any right of co-decision regarding adjustments during a competition. The only body competent to decide on such adjustments is the TC.
16. The FIA also notes that the Appellants knew about these adjustments before the Competition and yet did not request clarifications. Furthermore, the manufacturer JAS also did not take into account the clarifications made on 6 April 2018 by the FIA Technical Expert as to the validity of the adjustments decided by the TC.



17. Concerning the obligation to publish the performance adjustments before each competition, the FIA maintains that only the list of compensation weights has to be published, on account of the specificities of this particular adjustment variable.
18. Concerning the ECU, the FIA points out that it does not certify this equipment, but notes that the ECUs of the cars in question showed divergent turbo pressure and engine speed values during Race 3 despite having been sealed after the end of Race 2.
19. The FIA also contests having been aware of breaches of the Regulations during the first 5 races in the Cup, which it is claimed to have ignored. However, it stresses that by adopting a pragmatic approach, it is seeking to gradually correct the technical specifications of the cars on the basis in particular of anomalies noted during the first competitions.
20. In addition, three other cars had been disqualified on the Friday preceding the Race, such that the Appellants must have expected these new values to be applied.
21. Lastly, with regard to the new values applicable, the FIA stresses that the TC's BoP Chart indicates, as the maximum value applicable to engine speed, the same value, 7000 rpm, as WSC has done since the beginning of the events counting towards the Cup.
22. Regarding the sanction and its proportionality, the FIA states that the Stewards have discretionary power when they decide to impose a sanction.
23. The FIA denies that the new chart lacks clarity, and claims that the Appellants deliberately decided not to apply the new values.
24. As regards proportionality, other competitors were sanctioned in the same way; in addition, the Court has made it clear in previous cases that exclusion or disqualification was the most appropriate sanction in this kind of situation.
25. Lastly, the FIA addresses the question of the consequences of a possible rejection of the appeals, and maintains that the Court must take into account the fact that without the suspensive effect of the appeals, the cars in question would have had to start from the last row of the grid.
26. As it is impossible to determine in which places the cars would have finished the Race if the sanction had been applied, the FIA suggests that the Court must settle this question within the framework of the present procedure, in pursuance of the principle of economy of the procedure.



27. In so doing, according to the FIA, the Court must confirm the Decisions and, consequently, pronounce the Disqualification of Cars 9, 63 and 86 from Races 2 and 3 of the Competition.
28. Testifying at the hearing, Mr Léal declared that the analyses carried out by the TC had shown that the cars' performance values could be adjusted without affecting the ECU homologated by WSC. He confirmed that the measurements relating to the Appellants' cars represented cases of non-compliance and not occasional anomalies comparable to those encountered during the first five races of the Cup.

b) Findings of the Court

29. According to Article 80 of the 2018 sporting regulations of the FIA World Touring Car Cup – WTCR – (the “Sporting Regulations”), the TC *“may take any decision concerning the adjustment of performance”* (BoP).
30. However, the Court notes that according to Appendix 1 of the said Sporting Regulations, concerning the “BoP Chart”, *“these Technical specifications are subject to revision after further analysis based on race performance and decided by the FIA and (emphasis added) WSC Ltd.”*
31. Furthermore, Article 3.8 of the 2018 FIA WTCR technical regulations provides that *“FIA/WSC reserves the right to take further measures in order to guarantee proper BOP”* (in English in the original text).
32. Lastly, Article 3.1 of the 2018 TCR regulations provides that the role of WSC is notably to *“ensure the BoP at the start of any TCR Competition (...) and take all necessary decision to keep it through the season (emphasis added). WSC will release the 1st official BOP and will communicate it to any TCR Promoter before the Competitions start. All WSC decisions regarding the regulations will be communicated by means of Notifications and Technical Bulletins.”* (in English in the original text).
33. These regulations thus provide, in a consistent manner, that WSC must take part in the decision-making process for the publication of new BoP limits.
34. The FIA does not contest the fact that the TC, an FIA body, has not submitted the new limits for the approval of WSC whereas Appendix 1 of the Sporting Regulations requires a joint decision agreed mutually by each of the co-deciding bodies.
35. As the Court has previously stressed in its decision ICA-2015-03, it is not only up to the competitors, but also to the Stewards, Scrutineers and any other official or



competent committees of the FIA, to strictly meet the standards that apply to them.

36. It follows that Decision TC-R 2018/06, which adjusts the maximum boost pressure, was taken in an irregular manner, breaching in particular the aforementioned Appendix 1. It must therefore be regarded as void, and could thus not form the basis of the contested Decisions through lack of applicability.
37. The Court notes, however, that while the maximum boost pressure had been adjusted by the TC, this was not the case for the maximum engine speed, which remained at 7000 rpm for the Appellants' cars, the said maximum speed having undergone no changes since it was set by WSC at the beginning of the season, which is not contested.
38. Concerning the Appellant AIMM's Car 86, the Court notes that it is accused only of breaching the maximum boost pressure. Therefore, Decision 30 taken against it must be quashed in the absence of legal foundation.
39. Concerning the Appellant BGR's Cars 9 and 63, these were also penalised for exceeding the maximum engine speed limit, in a non-compliant manner and unrelated to any occasional anomalies – as stated by Mr Léal and uncontested by the Appellant.
40. In accordance with the Court's consistent jurisprudence concerning the breaching of the limits imposed by the technical regulations, the sanction of disqualification pronounced by the Stewards against the Appellant BGR's Cars 9 and 63 must thus be confirmed.
41. Turning now to the question of the consequences of such confirmation on the result of Races 2 and 3 of the Competition, the Court notes that it could leave it up to the competent sporting authority to draw the consequences of the present decision as regards the classification of the Appellant BGR's cars in the aforementioned races.
42. However, the Court stresses that according to Article 10.9 JDR "*the ICA has all the decision-making powers of the authority that took the contested decision.*", which means that it can decide on any type of sanctions, notably those provided for in Articles 12.2 (penalties), 12.3 (scale of penalties) and more particularly 12.8 (disqualification).
43. Given the above, and on the basis of the general principle of economy of the procedure, the Court decides to settle, in the present decision, all the legal and sporting consequences of the sanctions pronounced by the Stewards against the



Appellant BGR's Cars 9 and 63, including those relating to Races 2 and 3 of the Competition.

44. The Court specifies on this point that the disqualification imposed by the Stewards and confirmed by the Court refers to a qualifying session of the Competition. On the one hand, while the disqualification from this session may apply, on the other hand it is not possible to determine in which positions the Appellant BGR's cars would have finished in Races 2 and 3 if they had had to start from the last row of the grid without benefiting from the suspensive effect of the appeals.
45. In accordance with the Court's jurisprudence in this matter, given notably in pursuance of the principle of sporting fairness provided for in Article 1.1.1 ISC and in the preamble to the JDR, confirmation of the disqualification of the Appellant BGR's Cars 9 and 63 must lead to the disqualification of these same cars from Races 2 and 3 of the Competition.
46. The Court specifies that it is not a question of increasing the sanction imposed by the Stewards but simply of drawing the sporting consequences of the rejection of the appeal brought by the Appellant BGR, which leads to the lifting of its suspensive effect.
47. Concerning the other arguments and requests formulated by the parties, there is no reason to examine them taking into account the above, having noted that the FIA has, during the hearing, granted the Appellants' request mentioned *supra* (point 5 g).

COSTS

48. The appeal of AIMM having been accepted, the costs will be borne half by BGR and half by the FIA, in accordance with Article 11.2 of the JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeals admissible;**
- 2. Quashes Decision 30 taken by the Stewards of the Race of Slovakia on 14 July 2018;**
- 3. Confirms Decisions 31 and 32 taken by the Stewards of the Race of Slovakia on 14 July 2018 in that they sanction through disqualification the Appellant's failure to respect the maximum engine speed value;**
- 4. Pronounces the exclusion of the Appellant Boutsen Ginion Racing's Cars 9 and 63 from Races 2 and 3 of the Race of Slovakia counting towards the 2018 FIA World Touring Car Cup (WTCR);**
- 5. Orders the competent sporting authority to draw, as necessary, the consequences of the present decision;**
- 6. Orders the Appellant Boutsen Ginion Racing and the FIA to pay the costs, shared equally, in accordance with Article 11.2 of the FIA Judicial and Disciplinary Rules;**
- 7. Orders the return of the appeal deposit paid by the Appellant ALL-INKL.COM München Motorsport;**
- 8. Rejects all other and further findings.**

Paris, 24 September 2018

Philippe Narmino, President