

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 1 of the Rules of the International Court of Appeal**

CASE

**Decisions of the French National Court of Appeal respectively of 24 July 2006
and of 1st September 2006 (revised decision)
Event run at Varennes sur Allier on 25 June 2006
and counting towards the
CIK-FIA 2006 Formula A European Championship**

Hearing of Thursday, 9 November 2006 in Paris

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr Xavier CONESA (Spain), elected President, Mr Philippe ROBERTI de WINGHE (Belgium), Mr Edwin GLASGOW (Great Britain), and Mr José MACEDO e CUNHA (Portugal),

Meeting in Paris on Thursday, 9 November 2006 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 decisions of the French National Court of Appeal respectively dated 24 July 2006 and 1st September 2006 (revised decision) – Event run at Varennes sur Allier on 25 June 2006 and counting towards the CIK-FIA 2006 Formula A European Championship;

After hearing:

For the FIA, the appellant, Mr Sébastien BERNARD, Head of the Legal Department, assisted by Mr Vincent CARO, Executive Secretary of the CIK-FIA,

For the FFSA, Mr Nicolas DESCHAUX, Secretary General,

After noting the absence of the ACI-CSAI, who presented their apologies, and the absence of Intrepid Kart Technology, who also presented apologies, as did their legal advisor, Mr Roberto CAUSO

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, the appellant and the FFSA representative having been cross-examined and having supplied detailed explanations and answers to questions when asked prior to and then during the hearing by way of a system of simultaneous interpretation which did not receive the slightest criticism from the parties;

WHEREAS the explanations from the FIA aim to have the decisions of the French National Court of Appeal quashed due to the fact that the event ended amidst great confusion such that the National Court of Appeal could not validate any classification, which it did not hesitate doing in two contradictory decisions, as the second decision revised the first for reasons of a supposedly material error;

WHEREAS moreover, the FIA maintains that the Stewards of the Meeting had the power, by virtue of Article 141 of the International Sporting Code, to annul the results of the race and requests consequently that Decision N°37 taken by the Panel of the Stewards of the Meeting be confirmed;

WHEREAS Mr Nicolas Deschaux, representing the FFSA, supports the validity of the decisions of the French National Court of Appeal in as much as the Stewards did not have the right to annul the results of the race, this on the grounds that nothing in Article 141 so permitted and that consequently there could be no *nullité sans texte (no right to annul results if not specifically mentioned in regulations)*;

WHEREAS he also claims that the International Court of Appeal should not have the right to examine the dispute because the dispute was not referred to the Court by the FIA,

WHEREAS it is up to the International Court of Appeal to rule on the different points raised;

WHEREAS on the one hand, concerning the nullity of the two decisions taken by the French National Court of Appeal, this must obviously be confirmed in light of the confusion which reigned at the end of the event; whereas the confusion was recognized by both the FIA and the FFSA representative and could in no way allow for a classification other than arbitrary; whereas this was due to the fact that the Clerk of the Course, instead of waving a red flag at the finish line, notified competitors there would be an additional lap to run, and at the end of that lap, waved not a red flag but a checkered flag, which is contrary to all provisions and regulations in this context; and whereas he acknowledged in his report that he wondered why he had acted the way he had, and that it could only be, according to his own admonition in his report, due to « brain damage »;

WHEREAS concerning the decision of the Panel of the Stewards of the Meeting, Article 141 of the International Sporting Code must be interpreted;

WHEREAS the provisions formally specify that « *The stewards of the meeting shall have supreme authority for the enforcement of the present Code, of national and Supplementary Regulations and of programmes. They shall settle any claim which*

might arise during a meeting, subject to the right of appeal provided in the present Code;

WHEREAS in general the Stewards of the Meeting therefore have absolute power to enforce the regulations and, despite whatever powers they may have for particular cases as specified in the regulations, these powers can in no way undermine the general principle which provides absolute power to the Stewards of the Meeting;

WHEREAS Article 141 in the French version, the definitive text in this case, also sets out that the Stewards of the Meeting may, in particular, « ...*decide what penalty to enforce in the event of a breach of regulations* »;

WHEREAS the International Sporting Code thus makes a distinction between a penalty and a sanction, the penalty necessarily being of an individual nature and nothing else, a sanction having a whole other scope because it concerns any measure made necessary for an entire group and concerning the outcome of an event,

WHEREAS moreover it is legitimate to ask what the Stewards of the Meeting could do if, in circumstances where such confusion reigns, they could not annul results of an event when all possibilities of a fair classification were exhausted so as to avoid any unfair treatment of anyone;

WHEREAS the FFSA representative replies to the adverse party's argumentation by stating that Article 141 does not, in any of its provisions, provide the Stewards of the Meeting with the possibility of invalidating the results of an event, and this by virtue of the adage "*pas de nullité sans texte*";

WHEREAS this argument cannot hold water because the above-mentioned adage only applies to questions concerning the form, and that concerning the substance, a court always has the possibility of interpreting texts in order to rule, even if the specific case is not mentioned;

WHEREAS consequently, following the quashing of the two decisions taken by the French National Court of Appeal, it is necessary to confirm the decision of the Panel of the Stewards of the Meeting;

WHEREAS the representative of the FFSA also claims that the International Court of Appeal is not competent to examine the dispute without the case being referred to the International Court of Appeal by the FIA;

WHEREAS on the one hand it is necessary to remember that the highest jurisdiction in the judicial hierarchy has every right to summon a case pending before a lower court, as stated in Article 22 of the Rules which allow the International Court of Appeal to “... *decide, confirm, waive, mitigate or increase the penalty...*” which very certainly translates the above-mentioned right;

WHEREAS in this case the International Court of Appeal did not even need to exercise this right because after quashing the two decisions of the French National Court of Appeal, the International Court of Appeal can perfectly well limit itself to confirming purely and simply the decision of the Stewards of the Meeting;

ON THESE GROUNDS,

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

QUASHES the two decisions taken by the French National Court of Appeal for the reasons mentioned;

STATES that the Stewards of the Meeting have the power to annul the results of a race when the confusion noted during the event makes it impossible to establish a fair classification in order to avoid any unfair treatment with regard to the competitors or the drivers;

CONFIRMS consequently the decision of the Panel of the Stewards of the Meeting annulling the results of Race N°2 – Event run at Varennes sur Allier on 25 June 2006 and counting towards the CIK-FIA 2006 Formula A European Championship;

STATES that, in the light of the circumstances of the case, there is no need to rule regarding the costs.

Paris, 9 November 2006

(signature)

The PRESIDENT