



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeals brought by Vincenzo Sospiri Racing S.r.l.

against

Decisions Nos. 5/2019 and 5/2019 *bis* of the “Appeal and Disciplinary Commission” of the Real Federación Española de Automovilismo (RFEdA) dated 5 November 2019 rejecting the appeals against Decisions Nos. 8 and 9 of the Stewards of the Race of Monza counting towards the 2019 International GT Open

Cases ICA-2019-09 and ICA-2019-10

Hearing of Wednesday 29 January 2020 in Paris

Decision of 14 February 2020



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Harry Duijm (Netherlands), who was designated President, Mr Christy Harris (USA), Mr Arnas Paliukenas (Lithuania) and Mr Ladislav Vostárek (Czech Republic), met in Paris on Wednesday 29 January 2020 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeals brought by Vincenzo Sospiri Racing S.r.l. (“Sospiri” or the “Appellant”) against Decisions Nos. 5/2019 and 5/2019 *bis* of the “Appeal and Disciplinary Commission” of the Real Federación Española de Automovilismo (RFEdA) dated 5 November 2019 related to Decisions Nos. 8 and 9 of the Stewards of the Race of Monza counting towards the 2019 International GT Open, under which the Stewards respectively decided, in their Decision No. 8 to reject a protest filed by Sospiri after the Race 2 (“Protest 1”) and, in their Decision No. 9, to uphold another protest filed by Sospiri after the same Race 2 (“Protest 2”) and to impose a “Stop and Go” penalty against SPS Automotive Performance (“SPS”) for breach of Articles 16.1.f, 19.4 and 19.20 of the GT Open 2019 Sporting Regulations (the “GT Sporting Regulations”), as well as Articles 2b and 2e of Chapter IV of Appendix L to the FIA International Sporting Code (the “Code”).

The following persons attended the hearing:

on behalf of Sospiri:

Mr Vincenzo Sospiri (Sole Director)
Mr Frederik Schandorff (driver)
Mr Emmanuel Pirro (Technical Observer)
Mr Ricardo Rigoni (Engineer and technical adviser)
Mr Giovanni Simone (Attorney-at-law)
Ms Laila Burgio (Attorney-at-law)
Prof. Thomas Clay (Attorney-at-law)
Mr Taha Zahedi Vafa (Attorney-at-law)
Ms Paisley Simonnet (Attorney-at-law)

on behalf of SPS Automotive Performance e.K.:

Mr Tony Garcia (Attorney-at-law)

on behalf of the RFEdA:

Mr Javier Martin-Merino y Bernardos (General Secretary)

on behalf of the FIA:

Mr Pierre Ketterer (Head of Department – Governance,
Integrity and Regulatory Affairs)
Mr Barry Lysaght (Senior Legal Counsel)
Mrs Alejandra Salmerón Garcia (Senior Legal Counsel)



Also present at 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 29 January 2020, set out oral arguments and addressed the questions asked by the Court. The parties and the Court asked in particular several questions to the two drivers, Messrs Fabrizio Crestani and Frederik Schandorff (via videoconference for Mr Fabrizio Crestani), involved in the race incident which is at the basis of the present case. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. None of the Parties raised any objection, in relation either to the composition of the Panel or to the manner in which the proceedings have been conducted, notably the simultaneous translation.

REMINDER OF THE FACTS

1. The seventh round of the International GT Open series, which took place on 12 and 13 October 2019 at Monza, Italy (the “Competition”), is composed of four categories of competition, as provided under Article 1.2 of the International GT Open 2019 Sporting Regulations, namely:
 - The International GT Open for drivers (“Overall drivers’ Cup”);
 - The International GT Open – PROAM drivers Cup (“Pro-Am drivers’ Cup”);
 - The International GT Open – AM drivers Cup (“Amateur drivers’ Cup”) and
 - The International GT – Open Teams Cup (“Teams Cup”).
2. In accordance with Article 5.5.b of the Sporting Regulations, each driver is allocated a status based on the FIA drivers Categorisation List, on the driver’s records and on the results obtained in the International GT Open. The FIA driver Categorisation Regulations are the basis for all FIA Championships that use a driver system and can be adopted by any series (including the International GT Open). Under Article 8 of the FIA driver Categorisation Regulations, drivers are categorised into the categories Platinum, Gold, Silver or Bronze, according to specific criteria. Based on each driver’s status and their possible combinations, the entries for each competition (including the Competition) are divided into the classes set out in Article 5.5.b of the Sporting Regulations, namely:

- PRO: any possible combination including drivers with Platinum, Gold or Silver Status. Pair of platinum drivers forbidden.
- PROAM: any combination of drivers including one mandatorily with Bronze status.
- AM: pair of two drivers with Bronze status.

3. In the case of the Competition, the following categorisation applied:

Entry Category	Competition category capable of being contested			
PRO	Overall drivers' Cup	Teams Cup		
PROAM	Overall drivers' Cup	Teams Cup	Pro-Am drivers' Cup	
AM	Overall drivers' Cup	Teams Cup		Amateur drivers' Cup

4. The winner of a competition receives 15 points towards the classifications for the Overall drivers' Cup. If the winning entry of a given competition was a PROAM crew, they would receive those 15 points towards the classifications for the Overall drivers' Cup as well as 10 points towards the classifications for the Pro-Am drivers' Cup. The full breakdown of points is detailed in Article 9 of the Sporting Regulations.
5. Sospiri was represented by Car No. 66, driven by Messrs Frederick Schandorff and Tuomas Tujula, as a PROAM entry. SPS was represented by Car No. 20, driven by Messrs Valentin Pierburg and Tom Onslow-Cole, as a PROAM entry. SPS was also represented by Car No. 10, driven by Messrs Miguel Ramos and Fabrizio Crestani, as a PRO entry.
6. During the Competition, after Race 2, the Stewards received a first protest ("Protest 1") from Sospiri, which alleged that SPS had committed unsporting behaviour by allowing Car No. 10 to drive in an unsporting manner in order to benefit Car No. 20 to the detriment of Car No. 66.
7. After the same Race 2, the Stewards received a second protest ("Protest 2") from Sospiri, which alleged that Car No. 10 had committed behaviour against good sporting order by impeding Car No. 66 several times.
8. On 13 October 2019, after having heard the representatives of Sospiri, the Stewards issued a decision No. 8 ("Decision No. 8") and rejected Protest 1 as



they had found that *“there are no evidences that the driver of car # 10 received any orders to benefit his team mate”*.

9. On the same day, the Stewards issued a decision No. 9 (“Decision No. 9”) and admitted Protest 2 as they had found that Mr Fabrizio Crestani had breached Articles 16.1.f, 19.4 and 19.20 of the Sporting Regulations, as well as Articles 2b and 2e of Chapter IV of Appendix L to the Code. The Stewards imposed a “Stop and Go” penalty, which was converted into a 30-second penalty added to Car No. 10’s elapsed time.
10. Sospiri immediately notified its intention to appeal Decision No. 8 and Decision No. 9 (together referred to as the “Decisions”) and then confirmed the appeals before the Appeal and Disciplinary Commission of the RFEdA (the “RFEdA Commission”).
11. Sospiri was heard by the RFEdA Commission on 5 November 2019. The latter upheld both Decisions by issuing its own decisions, No. 5/2019 *bis* in respect of Decision No. 8 and No. 5/2019 in respect of Decision No. 9. Those decisions were notified to the Appellant on 20 November 2019.
12. Sospiri informed its parent ASN, namely the Automobile Club d’Italia (“ACI”), of its intention to lodge an appeal with the ICA against the Decisions and, in a letter sent by email and registered mail on 27 November 2019, Sospiri lodged an appeal before the ICA against the decisions of the RFEdA Commission.

PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

13. At the beginning of the proceedings it was decided that, given the close connection between the two cases (appeals lodged by the same team in the same context involving the same other competitor), they would be consolidated and examined jointly during the same hearing.
14. On 6 December 2019, all competitors in the 2019 International GT Open were invited to file a request to be heard as a third party, should they deem it necessary.
15. SPS was the only competitor which, on 11 December 2019, requested to be admitted to the proceedings as an interested third party.
16. In its joint Grounds for Appeal, presented on 20 December 2019, the Appellant filed, in essence, the following requests for relief from the Court:



- “- to reverse in full Resolutions no. 5/2019 and no. 5/2019 bis issued on 5 November 2019 by the Committee for Appeals and Discipline of the Real Federación Española de Automovilismo, as follows:*
- *having asserted the conduct of the driver Fabrizio Crestani, (...), to impose, as a consequence, on the driver Fabrizio Crestani, in replacement of the “Stop and Go” penalty, the more severe sanction of the driver’s exclusion from the Race of the International GT Open Championship held at the Monza Race Track on 13 October 2019.*
 - *To ascertain, (...), that the conduct engaged in during the race by the driver Fabrizio Crestani was done so in agreement and by order of the SPS AUTOMOTIVE PERFORMANCE e.K. Team and, as a consequence to exclude both the driver Fabrizio Crestani and the SPS Team from the Race held at the Monza Race Track on 13 October 2019 (...).*
 - *As further consequence, (...) [to re-establish] the right of the VSR Team to participate in the final ranking”.*
17. The RFEa sent its written observations on 16 January 2020 and asked the Court, in essence, to uphold the decisions issued by its Appeal and Disciplinary Commission.
18. With respect to SPS, which sent its written observations on 14 January 2020, the latter asked the Court to decide that:
- “i. The appeal lodged by Vincenzo Sospiri Racing S.r.l. against the RFEa Appeals Body’s decision 5/2019 is declared inadmissible, and the decision confirmed.*
 - ii. The appeal lodged by Vincenzo Sospiri Racing S.r.l. against the RFEa Appeals Body’s decision 5/2019bis is rejected, and the decision confirmed.*
 - iii. The entire costs of the appeal procedure are borne by Vincenzo Sospiri Racing S.r.l.”.*
19. The FIA, in its written observations received by the Court on 17 January 2020 (English version) and 21 January 2020 (French version), asked the Court to *“assess the facts in this case, after hearing the parties concerned and to rule on the arguments put forward by the Appellant”.*
20. The ACI, as the Appellants’ parent FIA member, neither provided written observations nor took part in the hearing.



ADMISSIBILITY

21. The Court acknowledges first that the Appellant lodged its Appeal against Decision No. 5/2019 *bis* in respect of Decision No. 8 in conformity with the FIA Judicial and Disciplinary Rules (“JDR”). The Court also finds that it has jurisdiction in the matter. Therefore, the Court declares the appeal against Decision No. 5/2019 *bis* admissible, which is undisputed.

22. As to the Appeal lodged by the Appellant against Decision No. 5/2019 in respect of Decision No. 9, the parties submitted the following submissions to the Court in relation with its admissibility.

a) *Submissions of the parties*

23. The Appellant puts forward in essence the following grounds on the issue of the admissibility of its appeal against Decision No. 5/2019 in respect of Decision No. 9:

1. The unsportsmanlike conduct of the driver Fabrizio Crestani was such that, on the basis of the principle of proportionality of the sanction, the stop and go penalty imposed by the Stewards and confirmed by the RFEa Commission “*does not appear adequate in the least given the seriousness of the manoeuvres deliberately committed by Fabrizio Crestani and the potential (even fatal!) consequences that they could have had*”.
2. Such a lenient sanction creates a very dangerous precedent, giving to other drivers who would be tempted to act like Fabrizio Crestani an “*aura of impunity*”.
3. The ICA may use its right to review cases based on Article 14 of the 2019 FIA International Sporting Code (“the Code”).
4. ICA precedents 2014-04, 2018-01 and 2018-02 allegedly authorise the ICA to review a decision imposing a stop and go penalty.

24. The RFEa puts forward that:

1. Article 12.2.4 of the Code clearly states that a Stewards’ decision imposing a stop and go penalty cannot be appealed.
2. The ICA precedents quoted by the Appellant are irrelevant.

25. SPS, for its part, contends that:

1. According to Article 12.2.4 of the Code and Article 16.5 of the GT Sporting Regulations, there is no right of appeal against a decision to impose a stop and go penalty or a time penalty.



2. The above articles exclude that the ICA may exercise its right to review the case *de novo* in order to impose a different penalty.
3. Article 14 of the Code is not applicable as no significant and relevant new element exists in the present case.
4. Those precedents quoted by the Appellant are irrelevant as (i) in case 2014-04, no sanction at all had been imposed by the Stewards, and (ii) in cases 2018-01 and 2018-02, the admissibility of the appeals was undisputed as those cases did not deal with decisions which cannot be appealed.
5. In the cases 2019-06 and -07, the ICA stated that *“the new wording of Article 12.2.4 ISC precludes the lodging of an appeal against the Decisions, therefore excluding any legality check by the ICA”*.

26. The FIA stresses that:

1. Article 12.2.4 does indeed clearly state that a Stewards' decision imposing a stop and go penalty cannot be appealed, the rationale of this rule being to avoid “field of play” decisions being subject to “Monday morning quarterbacking”.
2. The Appellant does not contest the legality of the Stewards' Decision No. 9.
3. The ICA has “routinely” declared appeals against such decisions inadmissible (see notably ICA 2009-24, 2016-04, 2019-06 and 2019-07).

b) Conclusions of the Court

27. The Court acknowledges that the Appellant lodged its appeal against Decision No. 5/2019 of the RFEa Commission in conformity with the time limits set under Article 10.3 of the JDR, which is undisputed.

28. Having considered the Parties' written and oral submissions as to the admissibility of this appeal, the Court notes the Articles of the ISC and of the GT Sporting Regulations which provide that certain decisions are not appealable before the ICA:

Article 12.2.4 ISC provides that “certain decisions are not subject to appeal. These include decisions to impose a drive-through penalty, a stop and go penalty, or other penalties as specified in the applicable sporting regulations as not being susceptible to appeal”.

Article 16.5 of the GT Sporting Regulations provides that “the penalties of Reprimand and Time Penalty (cases c1, c2, c3, c4, c5, c6, c7 & c8) including the cases were [sic] these are imposed in the last 5 minutes (or



3 laps) or at the end of the races or qualifying and lost of positions on the starting grid, cannot be appealed (Art. 12.2.4 ISR)”.

29. The Decision of the Stewards to impose a stop and go penalty was based on Article 16.5 lit. c) sub-lit. c2) GT Sporting Regulations. It was then converted into a 30-second time penalty to be added to the car's elapsed race time by virtue of Article 16.10 lit. g) sub-lit. g2) GT Sporting Regulations.
30. As these penalties were based on cases for which Article 16.5 GT Sporting Regulations expressly excludes any appeal, the Court decides that the Decisions are not subject to appeal, this in accordance with the same Article 16.5 GT Sporting Regulations and Article 12.2.4 of the Code.
31. The Appeal against Decision No. 5/2019 in respect of Decision No. 9 is thus inadmissible and shall therefore be rejected.

ON THE SUBSTANCE

a) Submissions of the parties

32. As to its appeal against Decision No. 5/2019 *bis* in respect of Decision No. 8, the Appellant put forward in essence the following grounds for appeal:
 1. The following rules apply to the question of the burden of proof and of the level of proof, namely:
 - a. The rules issued by the FIA, then
 - b. French procedural rules, then
 - c. The rules issued by the Court of Arbitration for Sport, then
 - d. The rules issued by the International Arbitration Courts, then
 - e. International law, notably Article 6 ECHR which sets some standards of proof.
 2. The burden of proof is indeed on the Appellant and the Court must decide on the basis of the standard of balance of probabilities.
 3. As to the burden of proof, if the Appellant can bring evidence of the elements that it puts forward to support its position, then the burden of proof must be reversed. In other words, SPS cannot simply contest the facts brought forward by the Appellant, it will have to prove the contrary.
 4. SPS, which claims that its driver had technical problems, did not bring any evidence of that. It did not prove any oil leak, engine issue, or other type of technical issue.
 5. “Absolute proof” cannot be required from the Appellant. A legal decision indeed does not have to be based on “absolute proof” but should be based on a series of clues, a body of evidence, as is actually admitted by



the RFEa Commission which mentions that there are not enough presumptions in the present case to sanction the team SPS.

6. The FIA admits that the “comfortable satisfaction” of the Court is sufficient, which means that absolute proof is not necessary.
7. French law also admits proof by presumption if the presumptions are serious, specific and consistent.
8. In the present case, there are 8 clues which demonstrate that SPS instructed its driver Fabrizio Crestani to block the Appellant’s driver, Mr Schandorff, namely:
 - a. Mr Crestani does not gain any advantage from his unsportsmanlike behaviour. Such behaviour only benefits his team, as Mr Crestani does not compete in the same category as Mr Schandorff.
 - b. Mr Crestani could not reduce his speed by 5 seconds per lap without his team authorising him to do so. The team is fixing the strategy. The thesis of “crazy driving” is not trustworthy. Further, the team SPS does not claim or prove that the radio was not functioning.
 - c. Mr Crestani’s car was able to go faster after the incident involving the two drivers. The car went faster or more slowly depending on the position. Mr Crestani let Car No. 21, which was competing against Mr Schandorff, pass. This behaviour does not make sense, particularly when one considers that Mr Crestani is a professional driver with 15 years of racing experience. According to the statistics, Mr Crestani was the fastest and the slowest during the same race.
 - d. If the team SPS had not approved Mr Crestani’s behaviour, it would have intervened. SPS did not bring forward any element proving that it had asked its driver to stop his behaviour on the track.
 - e. After the end of the Race, one can see that Mr Crestani is happy, and celebrating with the benefitted driver of car No. 20, which demonstrates that he did what he had been asked to do.
 - f. The ranking before, during and after the Race shows that SPS intervened and asked its driver to do what he did. The ranking before and after the Race shows the strategy put in place by SPS. The fact that SPS is aware of the situation during the Race shows why Mr Crestani intervened at a certain stage and drove slowly during a few laps before driving normally after Car No. 21 had passed.
 - g. The video shows that Mr Crestani uses his radio constantly and is therefore in permanent contact with his team, talking to them even in the chicanes. Why should he do so when he personally has no interest in the Race?
 - h. When Mr Crestani leaves the pit stop, he deliberately puts himself in front of Mr Schandorff; how could he do that if his team did not tell him what to do? Mr Crestani does not have any overall vision of the Race.



9. Based on all the above, there is no need to bring “absolute proof”, namely a recording of the instructions given by the team to its driver. Such a requirement would be similar to a *probatio diabolica* as absolute proof does not exist in the present case. Unlike in F1 competitions, the conversations between the teams and their drivers were not recorded. It is thus impossible for the Appellant to bring this absolute proof.
10. The Appellant having brought enough clues to satisfy the Court, the latter should either admit that the responsibility of the team SPS has been demonstrated or admit that the burden of proof is now reversed and that it is up to the team SPS to demonstrate that it is not responsible for the attitude of its driver.
11. The present case shows clear unsportsmanlike behaviour, leading to a skewed ranking. The ICA is the guardian of sporting equity and of ethical standards. The Court cannot let such behaviour go unpunished, otherwise the teams would do it again.

33. The RFEdA contends in essence that:

1. The Appellant may put forward clues but it does not produce any evidence.
2. The real *probatio diabolica* would be to request the other parties to these proceedings to prove that SPS did not instruct its driver to act the way he did.
3. Issuing a sanction on the basis of clues would create an apocalyptic situation where there would be no legal certainty and where the drivers would “always be in doubt”.
4. The principle of presumption of innocence should apply to the present case and the Court should find that such presumption in favour of the team SPS has not been rebutted. The Appellant’s case rests on a mere suspicion that no evidence can back up.
5. Sanctioning the SPS team and Mr Crestani by admitting the Appeal against the RFEdA Commission’s decision 5/2019 *bis* would violate the principle *ne bis in idem*, as Mr Crestani had already been sanctioned through the Stewards’ Decision No. 9, which has been upheld by Decision 5/2019 of the RFEdA Commission.
6. In conclusion, the RFEdA argues that “*there is no type of evidence which confirms there was a team order, a message, a signal, a conversation, etc. that the driver Mr Fabrizio Crestani drove in an unsporting manner to prejudice driver n°66 Frederick Schandorff*”.

34. SPS, for its part, submits that:

1. The evidence provided by the Appellant is irrelevant. No single piece of evidence has been provided to establish that SPS gave orders to its driver to act the way he did.
2. The on-board videos and telemetry data only show the driving manner of Mr Crestani at one point of the Race but nothing else.
3. In any case this incident has already been sanctioned by the Stewards with a stop and go penalty.
4. The presumption on which the Appellant based its appeal *“does not meet any of the cumulative requirements that, in the Appellant’s opinion, should meet any assumption in order to have the same value as direct evidence”*.
5. The Nelson Piquet Jr case, or so-called *“Crashgate”*, shows that it was only when Nelson Piquet Jr admitted that he had received orders from Renault F1 that the latter was sanctioned.
6. The Appellant’s accusation is serious and must be backed up by incontestable evidence. *“The Appellant is desperately trying to confuse the honourable members of the ICA’s Panel with unproven information, which is a clear sign that the Appellant is acting in bad faith in the current procedure.”*

35. The FIA explains in its written observations that:

1. According to Article 10.9 of the JDR, *“the ICA has all the decision-making powers of the authority that took the contested decision”*. The Code, the JDR and the GT Sporting Regulations are, however, silent on the appropriate standard of proof to be observed by the ICA.
2. In the case ICA 2019-03-04-05, the ICA determined that the Court should be *“comfortably satisfied”* by the proof provided by the party which bears the burden of proof.
3. According to the Court of Arbitration for Sport, the *“comfortable satisfaction”* standard is a standard higher than the civil standard of *“balance of probability”* but lower than the criminal standard of *“proof beyond a reasonable doubt”*.
4. The evidence provided by the Appellant is irrelevant. No single piece of evidence has been provided to establish that SPS gave orders to its driver to act the way he did.

36. During the hearing, the Court watched a video showing how the SPS driver Crestani with his Car No. 10, which was competing in the PRO entry, was chasing the Sospiri driver Schandorff, who was driving Car No. 66, which was competing in the PROAM entry against notably the SPS Car No. 20. After Mr Crestani had caught up with Mr Schandorff, the video shows that the latter

let him pass when he could do so. After having passed Mr Schandorff, Mr Crestani stayed in contact with him, with Mr Schandorff trying several times to overtake him. During this “mano a mano” between the two drivers, it appears that the front part of Mr Schandorff’s car hit the back part of Mr Crestani’s car. After a while the PROAM competitor No. 21, which was driving for a third team, managed to overtake both cars. Before being overtaken by Mr Crestani, Mr Schandorff was behind the SPS Car No. 20 and virtually champion of the PROAM competition; at the end of the Race, Mr Schandorff finished second in the Championship.

37. Mr Schandorff explained during the hearing that his team’s strategy was to try and win the Race or at least to finish directly behind the SPS Car No. 20. The strategy was working perfectly until Mr Crestani passed him. Mr Schandorff further stated in essence that Mr Crestani’s attitude did not make any sense given the fact that they were not competing in the same category. It was for this reason that his team had told him to let Mr Crestani pass and it was for this reason that Mr Crestani had no interest to slow him down and prevent him from overtaking, which led to Car No. 21 eventually overtaking Mr Schandorff.
38. The Court then heard Mr Crestani, via videoconference, who replied to several questions asked by the Appellant, who had called him as a witness. In essence, Mr Crestani explained that he had driven in a proper way and that he did not see any reproach to be made against him in the way he had driven. Asked about the contacts he had had with his team during the Race, Mr Crestani explained that he would have radio contacts only when there are “*big problems*” and that, in general, “*he liked to be left alone*” when driving. He had no discussion with the team about the other cars as “*everybody is doing something and nobody has time to chat*”. Mr Crestani then explained that he had had problems with his car, more precisely “*balance problems*” and “*some oil problems*”. Those problems were told to him after the Race but “*were difficult to explain*”. He was thus “*trying to manage his car and the tyres*”. Mr Crestani denied, however, that he had been zigzagging during the Race, but admitted that fresh tyres had been put on his car at the pit stop before he came back on the track to overtake Mr Schandorff. Explaining that it was because he already had problems with his car that he missed a chicane before catching Mr Schandorff, Mr Crestani then explained that he did not think that Mr Schandorff really let him overtake. Mr Crestani then added that he did not really remember when he had had problems and that those problems might be due to the fact that he might have “*pushed too much at the beginning of the Race*”. In his view, laps 26 and 27, shown on the video, were different from the rest of the Race “*because we were fighting with the other car for our position, which is normal*”. Mr Crestani therefore said that he did not let anybody pass and that it was not an easy overtake by Car No. 21, which took advantage of the fact that he was fighting with Mr Schandorff. As to the speed

difference between the two cars, Mr Crestani also said that he “*was pushing but he [Mr Schandorff] was pushing better than me*”. Coming back to the issue of the radio, Mr Crestani then explained that he “*was very busy and could not speak on the radio*”. Mr Crestani, who could not directly remember where the radio button was in his car, then confirmed that it was on the top of the steering wheel, that he could speak whenever he wanted but that he did not remember when he talked to his team and what contacts he had had with them. When asked if he had communicated on the issue of the balance problems of his car, Mr Crestani answered: “*I did not communicate on the balance issue. What can the engineers do?*”. Mr Crestani then confirmed that the team “*did not tell me how to do my drive*”, then added that he actually remembered “*that he was fighting but did not remember at which lap*”.

b) *Conclusions of the Court*

39. The Court notes first that the Stewards found in their Decision No. 9 that Mr Crestani had unsportsmanlike behaviour and decided to sanction him with a stop and go penalty, which was converted into a 30-second penalty. Irrespective of the question of the proportionality of that sanction - which cannot be reviewed by the Court, as explained above - the Court finds that this Decision by the Stewards of the Race is confirmation by the officials in charge during the Race that Mr Crestani’s manner of driving was clearly contrary to the rules. After having carefully reviewed the video of the incident at the origin of the Decisions and the subsequent Appeals, the Court can only agree with the conclusions drawn by the Stewards in this respect.
40. It appears also that neither Mr Crestani nor the team SPS appealed Decision No. 9. No element in the proceedings before the ICA tends to give any impression that Mr Crestani’s unsportsmanlike way of driving is disputed by the parties to the proceedings before the Court.
41. The Court notes also that according to Article 9.15.1 of the Code, “*the Competitor shall be responsible for all acts or omission on the part of any person taking part in, or providing a service in connection with a Competition or a Championship on their behalf, including in particular their employees, direct or indirect, their drivers (red.), mechanics, consultants, service providers, (...)*”.
42. Based on the clear wording of Article 9.15.1 of the Code, the Court concludes that Mr Crestani’s attitude during the Race leads to the liability of SPS irrespective of any instruction they might have given or not to their driver.
43. With reference to the principle *ne bis in idem*, the Court stresses that the sanction imposed on Mr Crestani did impact him and SPS with respect to the



PRO championship, whereas the issue in the present case has an impact on the PROAM championship where SPS was competing against another car, namely Car No. 20.

44. Any sanction imposed on SPS with respect to the PROAM championship would, therefore, in any event not violate the principle *ne bis in idem*. In other words, as far as the appeal against the RFEdA Commission's Decision 5/2019 *bis* with respect to the Stewards' Decision No. 8 is concerned, a sanction may be imposed against SPS based on the attitude of its driver.
45. The Court refers further to the FIA Code of Good Conduct under Appendix B to the Code, which provides notably that "*all FIA Licence-Holders and all Participants in International Competitions must not, in any way whatsoever, infringe the principles of fairness in competition, behave in an unsportsmanlike manner or attempt to influence the result of a Competition in any way that is contrary to sporting ethics (...)*".
46. The Code of Good Conduct provides further that "*all FIA Licence-Holders and all Participants in International Competitions undertake to cooperate fully and entirely with any disciplinary investigation conducted by the FIA*".
47. In the present case, the Court considered the attitude of the driver on the track and during the hearing while he was replying to the questions asked by the Appellant that had called him to be its witness.
48. It then went through the eight clues submitted by the Appellant to support its claim that the team SPS had instructed its driver to influence the result of the PROAM Race involving Car No. 20 of SPS and Car No. 66 of the Appellant.
49. The video clearly shows that Mr Crestani was manoeuvring in order to slow Mr Schandorff down. Mr Crestani himself declared before the Court that he was fighting with him. This fight started after Mr Schandorff let Mr Crestani overtake him, and neither Mr Crestani nor the SPS team gave any logical explanation as to why there would be a fight between two cars which were not racing against each other as they were not competing in the same category.
50. Mr Crestani also did not give any convincing explanation as to why he was driving on average 5 seconds per lap slower when he was in front of Mr Schandorff than during other moments of the Race.
51. Nor did Mr Crestani's argument with respect to the alleged problems with the balance of his car convince the Court. Mr Crestani himself is not sure about when the problems started; he does not explain why they had no impact



before he had caught Mr Schandorff and after Car No. 21 had overtaken him, and he confirms that he did not mention to his team that he had such problems. SPS did not bring any information on this issue either.

52. The Court thus concludes that there were no technical problems with Mr Crestani's car, which is actually also the view of the Stewards as they sanctioned the driver.
53. The Court was also not convinced by Mr Crestani's statements on the radio contacts he had with his team. According to the driver, he had hardly any contact with his team during the Race. The driver could hardly even remember where the radio button was on his steering wheel. The fact that Mr Crestani has difficulties to admit that he could have had contacts with his team during the Race is a clear indication that he wants the Court to believe that he had received no instructions.
54. As rightly put forward by the Appellant, considering the attitude of Mr Crestani on the track, which led him to be sanctioned by the Stewards, one would obviously expect his team to contact him and to ask him to change immediately his way of driving. Not only this is a matter of common sense but Mr Crestani's attitude also exposed his own team to sanctions as provided under Article 9.15.1 of the Code.
55. The team SPS does not provide any explanation and simply refers to the alleged absence of any element put forward by the Appellant to discharge its burden of proof.
56. It would, however, have been in the interest of SPS to show its good faith and provide explanations on what its reaction was when faced with its driver's attitude.
57. The Court notes indeed that such attitude served the interests of SPS Car No. 20, whereas Mr Crestani had no interest at all to "fight" with Sospiri Car No. 66.
58. Besides, the alleged absence of any contact or coordination between Mr Crestani and his team is not consistent with the facts of the Race. Without any contradictory and convincing explanation, the Court finds that it cannot be admitted that Mr Crestani acted the way he did, from the moment he jumped into his car in the pit stop until Car No. 21 had overtaken him, without instructions or at least information received from his team.



59. The absence of any explanation from SPS, its apparent total passivity during the incident which occurred between Cars No. 66 and No.10, and the impact of this incident on the final results of the PROAM Championships are thus serious, specific and consistent elements which lead to the Court to be comfortably satisfied that instructions had been given by the team SPS to its driver Crestani in order to influence the results of the Race in favour of SPS Car No. 20, to the detriment of Sospiri Car No. 66 driven by Mr Schandorff.
60. By doing so, the team SPS committed *in persona* and through its driver (Article 9.15.1 of the Code) a severe breach of the FIA Code of Ethics as well as of Articles 12.1.1.c (fraudulent conduct or act prejudicial to the interests of a competition or to the interests of motor sport generally) and 12.1.1.d (pursuit of an objective contrary or opposed to those of the FIA) of the Code.
61. Given the impact of those breaches on the competition at stake and on the interests of motor sport generally, the Court decides that those breaches must be sanctioned with disqualification of the SPS Automotive Performance e.K team from the Race 2 of Monza/PROAM category, cumulated with a fine, as authorised by Article 12.3.6 of the Code.
62. Furthermore, the *quantum* of the fine must be set in such a way that, in relation to the offender's estimated annual budget, it sends a clear message to the offender and other competitors that it is not possible to tolerate unsportsmanlike behaviour which, moreover, may have serious consequences in terms of safety on the track.
63. Besides, the fact that the team SPS did not show any repentance for its attitude, contesting the facts until the closing statements at the hearing before the Court and even accusing the Appellant itself of being in bad faith, must be considered as an aggravating circumstance which must be taken into consideration when fixing the amount of the fine, which is therefore set by the Court at 50,000 euros.

COSTS

64. Considering the outcome of the two Appeals, the Court decides that SPS shall bear all the costs, in accordance with Article 11.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the Appeal against Decision No. 5/2019 of the Appeal and Disciplinary Commission of the RFEdA not admissible;**
- 2. Declares the Appeal against Decision No. 5/2019 *bis* of the Appeal and Disciplinary Commission of the RFEdA admissible;**
- 3. Sets aside Decisions No. 5/2019 *bis* of the Appeal and Disciplinary Commission of the RFEdA and No. 8 of the Stewards of the Race of Monza counting towards the 2019 International GT Open;**
- 4. Disqualifies the SPS Automotive Performance e.K team from the Race 2 of Monza/PROAM category;**
- 5. Imposes a fine of 50,000 euros on SPS Automotive Performance e.K;**
- 6. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 7. Orders the return to Vincenzo Sospiri Racing S.r.l. of its appeal deposit;**
- 8. Decides that SPS Automotive Performance e.K shall bear all the costs in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 9. Rejects all other and further conclusions.**

Paris, 14 February 2020

The President

Harry Duijm