

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

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by the Automobile Club d'Italia-Commissione Sportiva  
Automobilistica Italiana (ACI-CSAI)  
on behalf of the competitor Chiesa Corse s.a.s.  
against Decision n°46 taken by the Stewards of the Meeting  
on 3 September 2011  
concerning Race 2 of the event run at Genk (Belgium)  
counting towards the 2011 CIK-FIA KF1 World Karting Championship**

**Case 2/2011**

**Hearing of Thursday 27 October 2011 in Paris**

The FIA INTERNATIONAL COURT OF APPEAL ("the Court"), made up of Mr Thierry Julliard (Switzerland), who was elected President, Mr Michael Grech (Malta), Mr Rui Botica Santos (Portugal) and Mr Jan STOVICEK (Czech Republic), met in Paris on Thursday 27 October 2011 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

The Court, ruling on the appeal brought by the Automobile Club d'Italia-Commissione Sportiva Automobilistica Italiana (ACI-CSAI) on behalf of the competitor Chiesa Corse s.a.s. (driver Nyck de Vries) ("the Appellant") against decision n°46 taken by the Panel of Stewards on 3 September 2011 to exclude kart n°1 belonging to the competitor Chiesa Corse s.a.s. from Race 2 of the event run at Genk (Belgium) and counting towards the 2011 CIK-FIA KF1 World Karting Championship (the "Event") for having caused a collision (the "Incident") in breach of Article 2.24 of the General Prescriptions applicable to international karting events and CIK-FIA championships, cups and trophies (the "General Prescriptions"), has heard the statements and examined the arguments of the Appellant and of the FIA.

In application of Article 14.1-1)-a) of the FIA Judicial and Disciplinary Rules (the "Rules"), as the 2011 CIK-FIA KF1 World Karting Championship is on the list of the major FIA Championships, all the competitors in this championship have been informed of the present appeal and invited to make their observations. That being the case, no observations have been brought to the Court's attention.

Attending the above-mentioned hearing were:

on behalf of the ACI / Chiesa Corse:

Mr Dino Chiesa (competitor)  
Mr Nick de Vries (driver)

on behalf of the FIA:

Mr Vincent Caro (Secretary General of the CIK-FIA)  
Mr Pierre Ketterer (Jurist)

The parties presented written submissions and, during the hearing on 27 October 2011, set out their arguments orally and replied to the questions put to them by the Court. The Court watched the video recordings of the Incident several times. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation; no objection to any element of the simultaneous translation or of the conducting of the hearing was raised by anyone.

No objection was raised by the parties concerning the composition of the Court.

## REMINDER OF THE FACTS

1. On the occasion of Race 2 of the Event, an incident occurred on the 19<sup>th</sup> and final lap of the race, involving kart n°24 driven by Flavio Camponeschi (for the Tony Kart Racing Team) and kart n°1 driven by Nyck De Vries (for Chiesa Corse).
2. Having heard the parties concerned, the Stewards handed down decision n°46 dated 3 September 2011 (the "Contested Decision"), excluding kart n°1 from the results of Race 2, on the grounds that it struck kart n°24 from behind, causing the latter to spin off the track, in breach of Article 2.24 of the General Prescriptions.
3. Article 2.24 of the General Prescriptions states that:

*An "Incident" means a fact or a series of facts involving one or several Drivers (or any Driver's action reported to the Stewards by the Clerk of the Course or the Race Director or noted by the Stewards and reported to the Clerk of the Course or the Race Director for investigation) who:*

*[...]*

*- have caused a collision;*

*- have forced another driver out of the track;*

*[...]*

*a) [...]*

*b) [...]*

*c) The Stewards may use any video or electronic system likely to help them to take a decision.*

*The Stewards shall inflict a 10-second time penalty on any Driver having caused an Incident. If the Incident was caused during a Qualifying Practice session, they shall proceed to the cancellation of the three fastest times which he/she achieved in the session concerned. However, considering its serious nature, the Stewards may decide, instead of the 10-second time penalty, of a sanction among those provided for in the penalty scale of Article 153 of the Code.*

## **PROCEDURE AND DEMANDS OF THE PARTIES**

4. Having notified its intention to appeal in due time, the Appellant lodged the appeal with the Secretariat of the FIA Courts on 5 September 2011 and on the same date paid the statutory appeal fee of €12,000.
5. In its grounds for appeal, the Appellant requests that the Court:
  - declare its driver N. de Vries not guilty of having caused the Incident; cancel the penalty of exclusion imposed by the Contested Decision or, as a subsidiary, replace it with a lighter penalty; and implicitly return to it all or part of the appeal fee.
6. The FIA, in its grounds in response dated 12 October 2011, requests that the Court:
  - reject the appeal as unfounded;
  - confirm the Contested Decision in its entirety.

## **ADMISSIBILITY**

7. The Court acknowledges that the Appellant showed sufficient intention to appeal and that this appeal was brought in conformity with the Rules.
8. The Court also considers that it is competent to judge this matter.
9. Therefore, the Court deems the appeal to be admissible.

## **AS TO THE CONTENT**

### **First ground – the Appellant is not responsible for the incident**

#### *a) Arguments of the parties*

10. The Appellant claims that the Contested Decision must be quashed on the grounds that Article 2.24 of the General Prescriptions was not breached as its driver must not be held responsible for the Incident.
11. The Appellant uses video recordings of the Incident to support its argument that its driver was making a legitimate overtaking manoeuvre and that, on the contrary, it is the driver of kart n°24 who must be held responsible for the Incident, as he was making a deliberate attempt to position his vehicle directly in the path of kart

n°1 to prevent any attempt to overtake, which is prohibited by Article 2(b) of the Code of Conduct on Karting Circuits.

12. The Appellant considers that the main factor that caused kart n°24 to spin off the track was the fact that the driver of kart n°24 was not looking where he was going and was not in full control of his kart.
13. The FIA claims that the Stewards applied with sovereign power the principles of assessment according to the rules in force and quite rightly took into consideration the dangers that such manoeuvres generate, as well as the significant sporting consequences that result therefrom. The FIA therefore considers that the principle of the Contested Decision is valid.

*b) Conclusions of the Court*

14. Based on the video analysis of the Incident and on the telemetric data submitted by the FIA concerning the two karts involved in the Incident immediately after it occurred, the Court considers that the responsibility of the driver of kart n°1 is proven without a doubt, given that he could have avoided the Incident either by reducing speed or by overtaking on the right.
15. However, it must be taken into account that the driver of kart n°1 could legitimately assume that the driver of kart n°24 was going to defend his position – as he had done previously – on the right of the track, whereas in the end he stayed on the left of the track after showing a slight hesitation. This hesitation, not at fault per se, may nevertheless have led to the error of judgement committed by the driver of kart n°1.
16. Consequently, the Court considers that the driver of kart n°1 must be held responsible for the Incident, as rightly decided by the Panel of Stewards.

**Second and third grounds – the penalty imposed by the Contested Decision is disproportionate**

*a) Arguments of the parties*

17. The Appellant claims that the penalty of exclusion imposed by the Contested Decision is disproportionate.
18. The Appellant refers to a number of incidents in other races that did not give rise to penalties, in order to show that the Incident was not an incident deserving of a penalty. The Appellant also reminds the Court that contacts between karts are common and that penalties for contacts are rare.
19. The Appellant also argues that Article 2.24(c) of Chapter 2 of the General Prescriptions justifies the Stewards' taking into account the gravity of an incident at the moment at which that incident takes place, which was not what happened in

this particular case. It is claimed that the Stewards therefore overstepped their authority by taking into account possible unforeseeable consequences of the Incident, which they should not have taken into account to determine the severity of the penalty.

20. Lastly, the Appellant claims that the Incident was not serious, and that the nature of the Incident therefore did not justify the severity of the penalty.
21. The FIA claims that the references to similar incidents that have given rise to lighter sanctions are insignificant in that, on the one hand, the stewards' power of appreciation of the sanction is discretionary and, on the other hand, each case is a special case.
22. The FIA notes that although the incident did not result in any physical damage to the driver of kart n°24, he nevertheless lost in the collision any chance to achieve a good position in the classification of the race.
23. Lastly, the FIA admitted during the hearing that while the error committed by competitor n°1 is proven, it was, however, unintentional.

*b) Conclusions of the Court*

24. In the first place, concerning the reference to other racing incidents presented by the Appellant, the Court rejects this argument, recalling first of all that while it is not unfamiliar with its own previous decisions, it cannot be bound by them. Incidentally, in this particular case, the incidents mentioned by the appellant did not give rise to any decision. Furthermore, a claim to equality of rights in the wrong cannot be justified.
25. That being said, the Court considers that, given the circumstances of the case, the sanction pronounced by the Stewards against the driver of kart n°1 appears too severe.
26. Indeed, there is reason to specify that in this case it was a racing incident that occurred on the last lap of the race, at a time when the stress level of drivers competing for victory is necessarily very high.
27. It has been determined above that there is no reason to hold any deliberate manoeuvre against the driver of kart n°1, and that the Incident happened rather because of an error of judgement on his part, wrong but explainable and understandable.
28. Concerning the consequences of the Incident, the Court observes that the collision between the two karts involved was not violent, as proved by the telemetry which shows that the speed of kart n°1 dropped by only 2 kph after the Incident.

29. Also, the fact that kart n°24 went off the track may, beyond being the direct consequence of the collision, also have been caused partially by the driving style of the driver of kart n°24. This reasonable doubt must legitimately be taken into account when determining the applicable sanction.
30. Lastly, it should be borne in mind that Article 2.24 of the General Prescriptions states that it is possible to refer to the penalties according to Article 153 of the International Sporting Code only insofar as the Incident is of a sufficiently serious nature and that, if it is not, the sanction applicable is established by the same Article 2.24 and constitutes a 10-second time penalty on the race concerned.
31. This seriousness of the Incident cannot be assessed in view of the sporting consequences when these do not result from an intentional fault that can be held against the driver who is to be penalised.
32. In the light of the above, the Court considers that the Incident was not of a sufficiently serious nature to justify recourse to Article 153 of the International Sporting Code.
33. In conclusion, the Court considers that the penalty of exclusion imposed by the Stewards on the driver of kart n°1 must be quashed and replaced, in application of Article 2.24 of the General Prescriptions, with a 10-second time penalty on the race concerned.

#### **Fourth ground – the driver of kart n°24 was responsible for the Incident**

##### *a) Arguments of the parties*

34. The Appellant claims that the driver of kart n°24, through his style of driving, lost control of his vehicle and thereby caused the Incident.
35. The FIA rejects this argument, saying that the driver of kart n°24 did not commit any infringement of the applicable rules and did not illegitimately prevent the driver of kart n°1 from overtaking him.

##### *b) Conclusion of the Court*

36. In the light of the above, the Court considers that the driving style of the driver of kart n°24 was not contrary to the applicable rules, even if, as indicated above, it was taken into consideration by the Court in assessing the degree of seriousness of the fault committed by the driver of kart n°1.

#### **On the costs**

37. In view of the circumstances of the case and insofar as the appeal is partially founded, there is reason, in application of Article 18.2 of the Rules, to partially

refund the appeal fee to the Appellant in the amount of €6000, and that no other sum can subsequently be demanded of him concerning this case.

**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. declares the appeal admissible;**
- 2. confirms the Contested Decision in that it declared the driver of kart n°1 responsible for the Incident;**
- 3. quashes the sanction of exclusion imposed on the driver of kart n°1 and replaces it with a 10-second time penalty for the race concerned;**
- 4. leaves it to the sporting authority to draw the consequences of the present decision;**
- 5. leaves it to the Appellant to pay the costs, limited to €6000, the rest of the appeal fee being refunded to it.**

Paris, 27 October 2011

**The President  
Thierry P. Julliard**