



**INTERNATIONAL COURT OF APPEAL (ICA)**

**of the**

**FEDERATION INTERNATIONALE DE L'AUTOMOBILE**

**Appeal brought by the Federazione Auto Motoristica Sammarinese (FAMS) on  
behalf of its licence-holder Tsunami R.T. s.r.l.**

**against**

**the decision No. 9/15 dated 5 November 2015 of the  
National Tribunal of Appeal of the Automobile Club d'Italia-Commissione  
Sportiva Automobilistica Italiana ("ACI-CSAI") having ruled on an appeal  
lodged by Antonelli Motorsport against the decision No. 7 dated 17 October  
2015 of the Stewards of the Mugello competition (Italy) counting towards the  
2015 Porsche Carrera Cup Italia.**

**Case ICA-2015-06**

**Hearing of 18 December 2015 in Paris**

The FIA INTERNATIONAL COURT OF APPEAL (the “Court”), comprising Mr Philippe Roberti de Winghe (Belgium), who was designated President, Mr Javier Bone Matheu (Spain), Mr Erich Sedelmayer (Austria) and Mr Pierre Tourigny (Canada), met in Paris on Friday, 18 December 2015 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeal brought by the Federazione Auto Motoristica Sammarinese (FAMS) on behalf of its licence-holder Tsunami R.T. s.r.l. (the “Appellant”) against the Decision dated 5 November 2015 of the National Tribunal of Appeal of the Automobile Club d'Italia-Commissione Sportiva Automobilistica Italiana (“ACI-CSAI”) having ruled on an appeal lodged by Antonelli Motorsport S.r.l. (“Antonelli”) against Decision No. 7 dated 17 October 2015 of the Stewards of the Mugello competition (Italy) counting towards the 2015 Porsche Carrera Cup Italia by which car No. 25 of Team Antonelli Motorsport S.r.l. was sanctioned with a two-second penalty on the grounds of misconduct during the competition.

The following persons attended the hearing:

On behalf of the Appellant:

Mr Francesco Saverio Mazzoli (Team Coordinator)  
Mr Côme Ledogar (Driver)  
Mr Christian Grosjean (Lawyer)  
Mr Massimiliano Cerrai (Lawyer)

On behalf of ACI-CSAI:

Mr Vincenzo Capo (Lawyer)

On behalf of Antonelli Motorsport:

Mr Marco Baroncini (Lawyer)

On behalf of the FIA:

Mr Pierre Ketterer (Head of Regulatory, Governance &  
Legal Corporate Affairs)

Also attending the hearing:

Mr Jean-Christophe Breillat (Secretary General of the FIA  
Courts)  
Mr Nicolas Cottier (Clerk of the FIA Courts)  
Mrs Sandrine Gomez (Administrator of the FIA Courts)

The parties filed their written submissions and, at the hearing of 18 December 2015, presented their oral arguments and answered the questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of

simultaneous translation. 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 translation was raised by either party.

## REMINDER OF THE FACTS

1. During the competition run at Mugello (Italia) from 17 to 18 October 2015 (the “Competition”), which was the final competition counting towards the 2015 Porsche Carrera Cup Italia, a race incident occurred on 17 October 2015 in the last five minutes of race No. 1 of the Competition, more precisely during lap No. 13.
2. This race incident involved car No. 25 driven by Ricardo Agostini from the Antonelli Motorsport S.r.l. team (hereafter “Antonelli”) and car No. 22 driven by Côme Ledogar from the Tsunami R.T. s.r.l. team (hereafter “Tsunami” or “the Appellant”).
3. After having heard from the parties involved and the Race Director, and after having watched the videos of the incident and considered the damage caused on car No. 25, the Stewards of the Mugello competition (the “Stewards”) issued a decision and sanctioned Mr. Agostini and car No. 25 of Antonelli with a two-second time penalty on the grounds of “*misconduct during the race*” and, as a consequence, of a breach of Articles 144, 123 *ter* and 165 lit.A of the National Sporting Regulations (“NSR”). This decision was issued with the number 7 (hereafter “Decision No. 7”).
4. Antonelli notified immediately its intention to appeal against Decision No. 7 and thereafter confirmed the appeal before the ACI-CSAI National Tribunal of Appeal, the Italian ASN.
5. On 5 November 2015, the National Tribunal of Appeal of the ACI-CSAI declared the appeal admissible and decided to reject the request of Antonelli for a milder sanction and that of the Appellant, which took part in the procedure as a third party, on the grounds that both drivers were equally liable for the incident (hereafter the “ACI-CSAI Decision”).
6. The order of the ACI-CSAI Decision was communicated to the parties on 6 November 2015 and the grounds of the Decision were handed over by the ASN to the parties on 20 November 2015.

## **PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES**

7. By letter dated 13 November 2015, the FAMS acting on behalf of the Appellant, lodged an appeal before the Court against the ACI-CSAI Decision (the “Appeal”).
8. In its submissions, filed on 27 November 2015, the Appellant contends that the Court should:  
  
*“Impose on said competitor Antonelli Motorsport Srl the greater sanction of a ‘Drive Through’ as provided for and in the forms of Art. 165 C) of the ACI-CSAI National Sporting Regulations or at least a greater ‘time’ penalty which the Honourable Court appealed will deem right.”*
9. Antonelli was authorised to take part in the procedure as a third party and filed its written observations on 9 December 2015, concluding, in essence, that the Appeal be declared inadmissible and that it be rejected.
10. The ACI-CSAI filed its response on 9 December 2015, requesting that the Court declare the Appeal inadmissible and adding that *“in any case it must be rejected as unfounded in fact and law”*.
11. The FIA, in its written observations dated 10 December 2015, put forward that the fact that as the Appellant and Antonelli are only separated by one point in the final classification of the Cup this justifies that the case be decided by the Court and *“leaves it entirely up to the Court to assess the seriousness of the infringement committed by Ricardo Agostini, and, if necessary, to pronounce a sanction of a different quantum.”*
12. Various videos of the incident were played, commented upon and discussed during the hearing.

## **ADMISSIBILITY OF THE APPEAL**

13. The ACI-CSAI Decision was issued on 5 November 2015 by the National Tribunal of Appeal of the ACI-CSAI. The order of that Decision was communicated to the Appellant on 6 November, whereas the grounds were communicated to him on 20 November 2015.
14. The notification of the Appeal was made on 13 November 2015, namely between the time that the order was communicated and communication of the grounds of the ACI-CSAI Decision.



15. The third party Antonelli quotes a jurisprudence from the highest Italian judiciary court and claims that the Appeal is inadmissible because the FAMS filed it too early, namely before the grounds of the ACI-CSAI Decision had been communicated.
16. The third party did not make any further statement on this submission during the hearing and neither the Appellant, the ACI-CSAI, nor the FIA addressed this submission from Antonelli.
17. The Court stresses that as an independent and internal authority of the FIA, it must assess the compliance with the formalities and the requisites of the notification of an appeal autonomously on the basis of the International Sporting Code (the “Code”) and of the Judicial and Disciplinary Rules (the “JDR”). The jurisprudence from the Italian court quoted by Antonelli does not apply in the interpretation of the Code and the JDR which are internal regulations of the FIA, an international sport association with headquarters in Paris governed by French law.
18. Article 12.3 JDR par. (i) lit. b) provides that “*appeals against a decision of a judicial body of an ASN (...) must be notified within 7 days following notification of the decision of the national judicial body.*”
19. On one hand, the notification of appeal was filed by the Appellant on 13 November 2015, namely seven days after the notification, by the National Tribunal of Appeal of the ACI-CSAI, on 6 November 2015, of the order of its Decision. On the other hand, the Appellant’s grounds of appeal where the Appellant confirmed its notification of appeal, were filed on 27 November 2015, namely seven days after the notification of the grounds of the ACI-CSAI on 20 November 2015.
20. Based on the above, the Court decides that the condition set under Article 12.3 JDR par. (i) lit. b) was met in any event and that Antonelli’s submission must be rejected.
21. Remaining on the question of the Appeal’s admissibility, Antonelli submits further that according to Article 7 of an agreement executed between the FAMS and the ACI-CSAI, both parties agreed to submit any dispute regarding the Competition before an *ad hoc* Arbitration Committee. Antonelli concludes that the Court has therefore no competence to decide on this case.
22. The FIA and the Appellant put forward during the hearing that Article 9.1.1 lit. c JDR states that “*the ICA will hear (...) appeals brought by National Sporting Authorities, organisers, competitors, drivers or other licence-holders who are addressees of a decision of a national court of appeal where such decision has an international dimension – in other words where an organiser, competitor, driver or other licence-holder is registered in or originates from the territory of a*



*National Sporting Authority that is different from the territory of the national court of appeal.”*

23. The FIA and the Appellant come therefore to the conclusion that the arbitration clause of the agreement between the FAMS and the ACI-CSAI cannot apply in the present case, as the Decision has “*an international dimension*”.
24. The Court notes first that the “*international dimension*” of the Decision is undisputed.
25. It finds then that the agreement mentioned by Antonelli must be considered as a “*res inter alios acta*” which binds only the two parties FAMS and ACI-CSAI. This agreement cannot bind or grant rights to the Appellant, the third party Antonelli, nor the FIA.
26. The Court stresses further that Article 1.1 of the Code provides that “*the FIA shall be the final international court of appeal for the settlement of disputes*” and Article 14.1.2 of the Code provides that “*for any dispute involving either a foreign licence-holder or one [person] of foreign nationality, the national court of appeal constitutes a court whose decisions may be appealed against before the International Court of Appeal.*”
27. As both FAMS and the ACI-CSAI are bound by the Code and the JDR based on the FIA Statutes, which is undisputed, the Court has competence to decide on the present dispute on the basis of the above mentioned Articles of the Code and the JDR.
28. Considering the above, the Court finds the Appeal admissible.

## **ON THE SUBSTANCE**

### *a) Arguments of the parties*

29. The Appellant claims that the ACI-CSAI Decision and Decision No. 7 are “*unfair*” considering the circumstances and the consequences of the incident on the final classification of the Cup. The Appellant argues that a heavier sanction should be pronounced against Antonelli’s car No. 25.
30. The Appellant claims further that the ACI-CSAI National Tribunal of Appeal misinterpreted the facts of the race and that its conclusion that both drivers were responsible for the incident was therefore wrong.
31. It requests that the Court scrutinises all the circumstances of the incident and draws the right conclusion, namely that a heavier sanction must be pronounced.



32. The third party Antonelli takes the opposite view and claims that it is the driver of the Appellant's car No. 22 which is exclusively responsible for the incident.
33. The ACI-CSAI expresses the view that its National Tribunal of Appeal assessed the facts properly, whereas, as mentioned above, the FIA leaves it up to the Court to assess the circumstances of the incident and to draw the proper consequences from it.
34. Both Antonelli and the ACI-CSAI argue further that in any event the Appellant has no standing to request an aggravation of the sanction imposed by the Stewards and confirmed by the National Tribunal of Appeal. They both support their submission by arguing that the Appellant was only a third party to the procedures before the Stewards and the National Tribunal of Appeal and that only the prosecutor before the National Tribunal of Appeal was competent to request an aggravation of the sanction.
35. The FIA recalls that it is the duty of the Stewards to take any decision relating to incidents occurring during the races, as the sole judges assessing the responsibilities and the resulting sanctions regarding the application of and compliance with the sporting and technical regulations.

*b) Conclusions of the Court*

36. The parties commented upon the various video sequences of the incident and explained their position in detail.
37. The Court took into account all the explanations provided to it by the parties, as well as the grounds put forward in the ACI-CSAI Decision and Decision No. 7.
38. The Court notes that according to Article 11.9.1 of the Code "*the stewards shall have supreme authority for the enforcement of the Code, of national and Supplementary Regulations and of Official Programmes.*"
39. The Court then stresses that the Stewards assess the situation and take their decision immediately after the incident which grants them a strong if not the best position to interpret the incident to form the basis of their decision. Although the National Tribunal of Appeal and, ultimately, the Court can review the case *de novo* based on the devolutive effect of the appeals, the Court considers that both national and international courts of appeal must exercise restraint when it comes to the pure assessment of a race incident and of the sanction imposed on a competitor by the Stewards.
40. In the present case, the Stewards considered that the driver Agostini from Antonelli committed "*misconduct during the race*" and the National Tribunal of Appeal confirmed Decision No. 7 after having decided that both drivers were "*liable in the same way for the accident*".

41. Based on the explanations provided, the videos played during the hearing, as well as on the grounds mentioned in the two Decisions, the Court did not find decisive elements which would lead it to set aside both Decisions and to change the sanction imposed on Antonelli's car.
42. Based on the above, the Court decides that the Decision must be upheld. As a consequence, it is unnecessary for the Court to address the submissions made by the ACI-CSAI and the third party Antonelli on the Appellant's standing to request a "*reformatio in pejus*" of the ACI-CSAI Decision.

### **COSTS**

43. Considering that the Appeal was rejected, the Court orders the Appellant to bear all the costs in accordance with Article 13.2 JDR, with the exception of, as agreed between Tsunami R.T. and Antonelli Motorsport S.r.l., the additional costs related to the Italian translation which shall be borne equally between them.
44. Pursuant to Article 13.2 JDR which provides that "*The costs do not include the expenses or legal defence fees incurred by the Parties*", each party shall bear its own expenses or legal defence fees.



**ON THESE GROUNDS,**

**THE FIA INTERNATIONAL COURT OF APPEAL:**

- 1. Declares the appeal admissible;**
- 2. Upholds the decision No. 9/15 of the National Tribunal of Appeal of the Automobile Club d'Italia - Commissione Sportiva Automobilistica Italiana (ACI-CSAI) taken on 5 November 2015 and the decision No. 7 dated 17 October 2015 of the Stewards of the Mugello competition (Italy) counting towards the 2015 Porsche Carrera Cup Italia;**
- 3. Orders the competent Sporting Authority to draw, as appropriate, the consequences of the present ruling;**
- 4. Orders Tsunami R.T. s.r.l. to pay all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA, with the exception of, as agreed between Tsunami R.T. s.r.l. and Antonelli Motorsport s.r.l., the additional costs related to the Italian translation which shall be borne equally between them;**
- 5. Orders the reimbursement of the third-party deposit to Antonelli Motorsport s.r.l., minus one half of the additional costs related to the Italian translation in accordance with pt. 4 above;**
- 6. Orders that each party shall bear its own expenses or legal defense fees, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 7. Rejects all other and further conclusions.**

**Paris, 18 December 2015**

**Philippe Roberti de Winghe, President**