



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeal brought by Mr Yohan Rossel

Against the

Decision No. 3 dated 12 September 2021 of the Stewards of the EKO Acropolis Rally counting towards the 2021 FIA World Rally Championship (WRC3) (the "Decision")

Case ICA-2021-03

Hearing of 9 November 2021, Paris

Decision of 16 November 2021



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), which comprised Mr Thierry Julliard (Switzerland), who was designated President, Mr Luigi Fumagalli (Italy), Mr Tony Scott-Andrews (United Kingdom) and Mr Felipe Zeraik (Brazil) held a hearing at the FIA headquarters in Paris on Tuesday, 9 November 2021.

Prior to the hearing, the Court received and considered submissions and attachments thereto made by Mr Yohan Rossel on one side and by the FIA on the other side.

The following persons attended the hearing:

on behalf of the Appellant, Yohan Rossel:

Mr Yohan Rossel, Appellant
Mr Philippe Veber, Lawyer
Mr Vincent Ducher, Team Manager (witness and knowledgeable person)

on behalf of the FIA:

Ms Alejandra Salmerón Salmerón García, Senior Legal Counsel
Ms Marianne Saroli, Senior Legal Counsel
Mr Jérôme Toquet, Technical Delegate
Mr Karmo Uusmaa, FIA Deputy Technical Delegate (witness), via videoconference
Mr Nossos Papakostas, Chief Scrutineer for the Greek ASN (witness), via videoconference
Mr Emanuele Saglia, Assistant to the FIA Technical Delegate (witness), via videoconference

on behalf of the Fédération Française du Sport Automobile (“the FFSA”):

Ms Marie-Laure Gervais, Head of contracts and litigation
Mr Benjamin Lamy, Legal Counsel

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 written submissions and, at the hearing on 9 November 2021, set out oral arguments and addressed the questions asked by the Court. The witnesses called by the Parties addressed the questions asked by the Parties and the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous interpretation in French and English. None of the Parties raised any objection, in relation either to the composition of the Court or to the manner in which the proceedings and the hearing were conducted, notably concerning the respect of the adversarial principle or the simultaneous interpretation.

I. REMINDER OF THE FACTS

1. On the occasion of the EKO Acropolis Rally held in Greece on 12 September 2021 (the "Rally") within the framework of the 2021 FIA World Rally Championship (WRC3) (the "Championship"), the Stewards received on 12 September 2021 at 18:25 a report (the "Report") from the FIA Deputy Technical Delegate, Mr Karmo Uusmaa (the "Deputy Technical Delegate") regarding the post-race scrutineering.
2. The Deputy Technical Delegate reported car No. 30 of Mr Yohan Rossel (the "Appellant" or the "Competitor") for the following reason:

"The weight of the front subframe is not complying with the homologation form A-5773 01/01 VR5".
3. The Deputy Technical Delegate added that *"the weight of the front subframe in the homologation form is 12245, with tolerance of +5% / -2%. So the maximum weight is 12857.25 g. The weight measured for the subframe, which was fitted on the car: 12950 gr".*
4. Following this report, the Stewards summoned, on the same day, the Competitor's representative, Mr Vincent Ducher, team manager, by means of a correspondence, stating the following reason : *"Alleged breach of Art. 10.3.3 of the FIA International Sporting Code"*.
5. On the same day, the Stewards held a hearing in the presence of Mr Vincent Ducher, Mr Thomas Breton, Team engineer, and Mr Damien Arbonnier, Citroën Racing Engineer on the Competitor's side and Mr Jérôme Toquet, Technical Delegate as well as Mr Karmo Uusmaa, on the side of the FIA.
6. After having studied all documents and after having heard the Competitor's and the FIA's representatives, the Stewards issued the Decision at 21:50 stating that the Competitor was disqualified for a breach of Article 10.3.3 of the International Sporting Code (the "Code").

7. The Decision reads in essence as follows:

“[...] Mr Ducher, Mr Breton and Mr Arbonnier agreed that the weight of the part was above the homologated accepted tolerance and that the scrutineering and weighing procedure had been carried out correctly”;

“In Rally Italia Sardinia 2021 the same car of the same competitor was found with the same incompliance at the final scrutineering (front subframe overweight)”;

“The non-competing subframe used in EKO Acropolis Rally 2021 was already in the possession of the competitor at the time of Rally Italia Sardinia 2021”;

“In Rally Italia Sardinia, a fine of EUR 30,000 was imposed on Citroën Racing, 15,000 Euros of which were applied with suspension of sentence, subject to no further breach of a similar nature-quality control error [...]”;

“Mr Arbonnier (Citroën Racing) demonstrated to the satisfaction of the Stewards that they have taken all reasonable measures to resolve the issue that had occurred at Rally Italia Sardinia [...]. Therefore, [...] Citroën Racing has not repeated a further breach of poor quality control”;

“It was hence the responsibility of the Competitor alone to make sure that the part (front subframe) installed in their car complied [...] The representation made by the Competitor that they have no explanation why it was now found to be overweight could not relieve them from responsibility [...]”.

8. On the same day, the Decision was notified via email at 22:10 and Mr Arbonnier acknowledged receipt of it. The Decision was then published at 22:25 on the official notice board.
9. On 12 September 2021 at 22:47, namely within one hour of the publication of the Decision, the Competitor’s representative notified the Stewards in writing of the Competitor’s intention to appeal the Decision.
10. Upon request of the FIA Technical Delegate, Mr Toquet, the front subframe was sealed and provided to the EKO Rally Organiser’s representative, Ms Maria Margaritis at 23:50.
11. The front subframe was identified with the FIA holographic sealing sticker “MCG286”.
12. During the hearing before the Court, the witnesses Mr Uusmaa and Mr Papakostas explained how the post-race scrutineering had been conducted.
13. Mr Uusmaa notably mentioned that the first weighing of the Appellant car’s front subframe showed that the latter was overweight. The Appellant’s team was thus requested to clean the subframe in order to proceed with a new measurement. Mr Uusmaa explained further that the front subframe was then weighed three times using the scales provided by the FIA, on one part, and by the ASN on the other part.

Mr Uusmaa confirmed that those measurements were made in the presence of the Appellant's representatives, who made no remarks regarding the weighing procedure. Mr Uusmaa added that the result was identical with both scales, subject to the resolution difference between the two scales. Indeed, the FIA scales showed a result rounded to 50 g and the ASN scales showed a result rounded to 5 g.

14. Mr Papakostas confirmed that the Appellant's team had been present, and that both scales were used several times. This second witness explained to the Court that he had seen the Appellant's team cleaning the front subframe before the measurements. He also confirmed that the ASN scales had been calibrated four days before the scrutineering. Mr Papakostas explained further that on the day of the scrutineering, an on-site verification procedure had been successfully carried out by the FIA on top of the official calibration, with the help of a 2 kg calibrated weight. Returning to the calibration of the ASN scales, Mr Papakostas confirmed that it had been executed by a duly accredited institute, which used several calibrated weights, applying a perfectly standard procedure. As to the reason why there was no label applied to the scales, the witness confirmed that for private measurements, Greek law only required certificates. A label was only required when a set of scales was intended for sale to the public. As in the present case the scales were used for private measurements, no label had to be applied to the ASN scales. Mr Papakostas said that the certificate was sufficient, as it referred clearly to the scales that had been calibrated.
15. Mr Saglia explained how the previous checks in Sardinia had been conducted, confirming that a first front subframe which had been provided by Citroën, the manufacturer of the Appellant's car, had been in breach of the Championship's Technical Regulations. Mr Saglia added that the Appellant had been supplied a new spare front subframe, bearing the number 99, and requested to test its weight on the scales used by the FIA. When the Court asked him if he remembered the weight indicated on the scales, Mr Saglia answered that he did not remember the exact results of the measurement, but that he could confirm that the new front subframe was compliant with the regulations. Mr Saglia also confirmed that the measurement of the new front subframe was not official, and was thus not recorded officially.
16. The front subframe No. 99 was shown to the Court at the hearing. During the hearing, Mr Ducher confirmed that this front subframe No. 99, which had been weighed in Sardinia and found compliant, was then installed on the car and was then used for the Ypres Rally and the one in Greece, after which it was found to be non-compliant, for reasons that Mr Ducher and the rest of his team could not explain. Mr Ducher confirmed however that the front subframe had been cleaned after the Ypres Rally, and that possibly the team had painted it in order to protect it.



II. PROCEDURE BEFORE THE COURT

17. The Appellant filed his Notification of appeal on 16 September 2021 at 18:21 (Paris time) and its Grounds of appeal on 7 October 2021.
18. Upon request of the FIA, the President of the Hearing issued a procedural decision on 5 October 2021 (“Decision No. 1”) deciding that the FFSA, which had expressed its intention to orally assist the Appellant during the hearing, but not in writing beforehand, would abstain from presenting arguments which had not been the subject of a written submission beforehand, and that the FFSA would be considered as accompanying the Appellant and would have the opportunity, as a participant at the hearing, to make a closing statement in accordance with Article 10.9.3 paras. 1 and 2 of the Judicial and Disciplinary Rules (the “JDR”).
19. On 12 October 2021, the President issued a second procedural decision (“Decision No. 2”) upon request of the FIA, and decided that the Appellant should provide as soon as possible and no later than Friday, 15 October 2021, 17:00 (Paris time), a witness statement or, alternatively, an explanation of the main points on which Mr Ducher intended to testify during the hearing. As a consequence, the President granted the FIA an additional period of time until 28 October 2021, 17:00 (Paris time), to notify to the Court its Grounds in response.
20. As requested under Decision No. 2, the Appellant filed on 14 October 2021 an explanation on the main points to be developed at the hearing by his witness, Mr Ducher.
21. The FIA filed its Grounds in response on 28 October 2021 (English version) and on 1 November 2021 (French version).

III. REQUESTS OF THE PARTIES

22. The Appellant asked the Court in his Grounds of appeal to :
 - *“Declare Mr Yohan ROSSEL’s appeal admissible,*
 - *Hear Mister Vincent DUCHER as a witness,*
 - *Declare that the conditions of the weight checking of the front cradle [ed.: the front subframe] of the vehicle of Mr Yohan ROSSEL are irregular,*
 - *Declare that the performed control is null and void,*
 - *Declare that Mr Yohan ROSSEL is in good faith.*

Consequently,

- *Amend the decision no. 3 of the FIA Stewards of 12 September 2021,*
- *Cancel the disqualification of Mr Yohan ROSSEL from the 2021 EKO ACROPOLIS RALLY, declare him the winner and award him the corresponding points.*

In any event, assuming that the infringement is established and in the alternative,

- *Declare that the disqualification penalty is disproportionate and therefore set it to fairer proportions, by substituting it with a symbolic time penalty or a symbolic fine.”*

23. In its Grounds in response, the FIA requests the Court:

“i. further to Article 10.9 of the JDR, to dismiss the Appellant’[s] appeal and to confirm the Steward’s Decision No. 3 in its entirety; and

ii. order the Appellant to pay ICA costs of the appeal referenced in Article 11.2 of the JDR of the FIA.”

IV. ADMISSIBILITY OF THE APPEAL BEFORE THE COURT

- 24. The Court notes that the Appellant brought his appeal in accordance with the provisions of the JDR.
- 25. The Court also considers that it has jurisdiction to hear this appeal.
- 26. Therefore, the Court deems the appeal admissible, which the FIA expressly admitted in its response to the Grounds of appeal.

V. ON THE SUBSTANCE

a) Arguments of the parties

- 27. The Appellant puts forward in essence the following grounds in support of the appeal:
- 28. The Appellant claims first that the appeal *“must be examined in light of the sporting context in which decision No. 3 of the Stewards is recorded.”* In that context, the Appellant explains that the Decision significantly reduced his lead in the Championship standings.

29. The Appellant then submits that the FIA, as an international federation with its headquarters in Paris, is governed by French law, meaning that *“the international sports standards must only be applied if it complies with”* French law.
30. Based on the foregoing, the Appellant argues that *“the FIA’s use of weighing instruments for the purpose of imposing penalties is strictly regulated by the regulatory arrangements under French law.”*
31. Referring in detail to the various regulatory obligations imposed by French law to the user of weighing instruments, the Appellant puts forward that *“there is no evidence to suggest that the regulatory obligations relating to in-service checks, use and maintenance of weighing instruments have been complied with in the context of the weighing operations of the front cradle [ed.: the front subframe] of Mr Yohan ROSSEL’s car.”*
32. The Appellant further contests that the members of his team, namely Messrs Ducher, Breton and Arbonnier had validly admitted that the inspection and weighing procedure applied by the FIA officials had been properly carried out, as they could not be aware of the applicable rules imposed by French law. According to the Appellant, his right to be heard implies in any event that he must be allowed to challenge the legality of the weighing procedure during the appeal proceedings.
33. With regard to the weighing procedure, the Appellant contends that the check mark requested under French law is not visible on the scales used to weigh the front subframe, contrary to the scales that were used during other competitions, notably during the ERC SERRAS DE FAFE E FELGUEIRAS RALLY, where scales including the regulatory label had been used.
34. The Appellant adds that the FIA allegedly changed the scales at the time of weighing, using scales provided by the organiser, as it had been confronted with the malfunction of its own scales.
35. In addition to the formal requirements imposed by French law, the Appellant refers further to the technical requirements to be met in order to proceed properly with the weighing of the front subframe and claims that the *“dimensions of the load receiver [were] insufficient to accommodate the surface area of the front cradle and allow reliable weighing.”*
36. The Appellant then argues that the *“lack of knowledge of the methods of use of the scales used by the organiser”* calls into question the reliability of the measurements carried out in the present case.
37. The Appellant then refers to the FIA’s own regulations on the use of the KERN scales, which are normally used by the FIA.
38. In this respect, the Appellant claims that the weighing was carried out immediately after the new scales had been connected to the power supply, without taking into

account the 10-minute warm-up time imposed by the FIA regulations, compromising the accuracy of the weighing, as the service temperature of the scales had not been reached. The Appellant adds that the adjustment procedure required under the FIA regulations was not applied either.

39. The Appellant also puts forward that not only the FIA regulations for use of the scales were breached during the weighing procedure, but also the instructions for use provided by the manufacturers of both scales, namely ADAM (scales of the ASN) and KERN (scales of the FIA), in particular the calibration procedure.
40. The Appellant also argues that independently from the regulatory issues raised in his Grounds of appeal, the margin of error linked to the “*absence of precaution during the control*” must be considered, given the small weight difference of 92.75 grams which had been measured in relation with a 1.5 ton vehicle.
41. The Appellant explains that following an experiment he had carried out to demonstrate the above, it appeared that soaking the front subframe in water would increase its weight, after draining, by 192 grams. According to the Appellant, this phenomenon could be a further explanation of the fact that the front subframe was not compliant in Greece when the result of its weighing in Sardinia had been within the range set by the regulations.
42. Arguing that he had no practical or technical means to verify the compliance of the weight of the front subframe and that any sanction that would be imposed on him should consider that he was in good faith, the Appellant then refers to three decisions issued by the ICA, namely a decision of 30 November 2010 (Case 03/2010, *Prospeed Competition ASBL*) and two other decisions of 14 October 2009 (Case 21/2009, *Hexis Racing AMR*) and 23 February 2010 (Case 26/2009, *Pekaracing NV*) and contends that he could not be penalised with a disqualification.
43. As a final argument, the Appellant then argues that the penalty imposed on him was disproportionate, given the nature of the facts. The Appellant explains that the front subframe exceeded by 92.75 grams the permissible limit, while its total weight was around 13 kilograms, which could not provide him any sporting advantage. The Appellant adds as a further argument on the disproportionality of the sanction, that the minimum weight of the Rally2 category cars is 1,390 kg, and that the Stewards confirmed that the Appellant’s car was compliant in that respect.
44. As a consequence, the Appellant regards the Decision as inconsistent, as it penalises a driver for the weight of a part heavier by a tiny proportion “*whereas the only competitive advantage he could have derived from it would have been the one of a vehicle lighter of several hundred kilos.*”
45. According to the Appellant, the Decision therefore violates the principle of proportionality, and is in complete contradiction with other Stewards’ decisions issued in the past during WRC competitions. The Appellant refers in this respect to

five decisions issued between 2018 and 2021 that he deems comparable to the present case, and which led to time-penalties or fines, rather than disqualifications.

46. The FIA, for its part, contends in its Grounds in response, in essence, what follows:

- (i) The FIA notes first that Mr Ducher was the Appellant's official representative and that therefore *"the undeniable reality is that, at the hearing, the authorised representative of the Appellant agreed that the weight of the part was higher than the permitted tolerance and that the inspection and weighing procedure had been carried out properly."* Based on the foregoing, the FIA contends that the Appellant's arguments on the weighing procedure should not be admitted.
- (ii) According to the Appellant's car homologation form No. A-57773, the front subframe weight had to be 12.245 kg, with a tolerance of - 2% / + 5%. As the weight measured after the Greek Rally was 12.950 kg, it exceeded the margin of tolerance by 92.75 g.
- (iii) The FIA then submits that the elements of French law which the Appellant relies on are not applicable to the practice of sports, and it compares those texts of French law with the Swiss regulations on metrological control *"which explicitly excludes from its scope the non-automatic weigh[t]ing instruments used in sports."* The FIA concludes that *"the scope of the French regulations on non-automatic weigh[t]ing instruments seems to exclude private and sporting practices, being such interpretation corroborated by the Swiss regulations on the subject."* The FIA adds on this same issue that *"the use of the ASN's scale[s] is determined by means of the Chief Scrutineer Manual"*.
- (iv) Regarding the issue of the reliability of the measurements made in the present case, the FIA explains that two scales were used, namely the ASN scales and the FIA scales, as explicitly mentioned in the Report. The FIA explains further that the FIA scales had a resolution of 50 g whereas the organiser's scales (the Greek ASN) had a 5 g resolution. The FIA adds that the use of the ASN's scales is foreseen in the Chief Scrutineer Manual and is therefore *"an established and well-known procedure."* As the ASN scales received a "Calibration Certificate" issued by an accredited laboratory four days before being used on the Appellant's front subframe, and as the FIA scales also received a "Calibration Certificate" on 18 December 2020 issued by a French organisation, namely PMS BECUS, which is accredited by the French accreditation committee (COFRAC), the FIA claims that the results are valid. The FIA explains further that, before the measurements were made, both scales were tested by Mr Jérôme Toquet, who used an FIA-certified weight of 2 kg on both scales, which both provided a result of 2,000 g. The FIA thus concludes that *"there cannot be any doubt that the scales used by the FIA Deputy Technical Delegate to determine the weight of the front subframe included in his report were an accurate and reliable instrument of measure."*

- (v) Relying on the witness statements filed with its Grounds of response, the FIA then contends that the post-race scrutineering was duly performed, that the instruments of measurement were used in accordance with their instructions of use, and that the dimensions of both scales were adequate for the weighing of the front subframe.
- (vi) Regarding the maximum weight set by the applicable sporting regulations, the FIA stresses first that the Appellant accepted through the signing of the entry form that he would be bound by those regulations and that, as a Competitor, he was responsible for ensuring the compliance of his car with such regulations. The FIA then explains that the fixed weight of 1,2245 g and the tolerance of + 5% and - 2 % were established *“to ensure that none of the parts were lighter [n]or heavier than the homologation weight after having taken into consideration the production and environmental tolerance. This is designed to dissuade manufacturers from building multiple versions of the same piece to suit specific conditions.”* Given the above, the FIA stresses further that the weight of the front subframe of the Appellant’s car exceeded the maximum limit of tolerance by 92.75 g, but also exceeded the fixed weight set in the homologation form by 705 g.
- (vii) Referring to the sanction, the FIA argues that the compliance with the WRC Technical Regulations is absolute and objective, meaning that no fault of the Appellant needs to be demonstrated.
- (viii) The FIA rejects notably the outcome of the Appellant’s experiment on the front subframe and explains that the weighing procedure was properly applied and that no external element could have biased the outcome of this procedure. The FIA stresses further that the front subframe in question, which bears the number 99, had never been officially checked before by the FIA, notably in Sardinia, where another subframe, bearing the number 89, was indeed checked and found to be non-compliant. The FIA added at the hearing that in any event, would the subframe No. 99 have been officially checked by the FIA in Sardinia,, *quod non*, it remains that during three months, namely from the date of the Rally in Sardinia until the date of the Rally in Greece, the FIA could not possibly ensure that the front subframe had not been modified in one way or another by the Appellant’s team.
- (ix) Referring to the issue of the proportionality of the sanction, the FIA puts forward that *“it is the longstanding jurisprudence of the ICA to impose the sanction of disqualification in cases when a [competitor’s car] is discovered to have breached the technical regulations.”*
- (x) The FIA then intends to demonstrate that no exceptional circumstance is given in the present case. It explains that *“by adding more weight in a subframe a team may benefit from additional reliability and therefore manage to obtain a sporting advantage.”* According to the FIA, the EKO Acropolis Rally is very hard and demanding on the mechanical parts of the car, such that the Appellant

could have obtained a sporting advantage in this particular race. The FIA adds that given the specific restrictions with respect to the weight of the front subframe, the Appellant's submissions on the ratio between the excess weight of said subframe and the total weight of his car, are irrelevant.

- (xi) The FIA stresses that the Appellant was already confronted in Sardinia with a problem of his car No. 32's front subframe being overweight. The FIA thus contends that the Appellant was fully aware of the potential problems with his car's front subframes, and he and his team should thus have been even more cautious.
- (xii) The FIA concludes that the standard penalty for a technical breach, namely disqualification, should apply, as the Appellant did not prove that the breach was due to a clerical error or a mistake in the transcription of technical figures into the homologation form. In this respect, the FIA puts forwards that the various decisions mentioned by the Appellant cannot be of any help in the present case, as the sanctions imposed did not relate to similar circumstances. On its side, the FIA submits four decisions issued by various panels of stewards where drivers were disqualified for non-conformity with the homologation form.

b) *Applicable Regulations*

- 47. The applicable rules are the FIA regulations in the version in force at the moment when the 2021 EKO Acropolis Rally took place, namely on 12 September 2021.
- 48. As a result, the applicable regulations relevant to the merits of the present case are the 2021 Editions of the Code, the WRC Sporting Regulations and Appendix J of Articles 251 and 261.
- 49. As to the Procedural Rules, and since the intention to appeal was filed on 12 September 2021, the applicable regulations are the 2021 Edition of the JDR. As determined under article 14.4 JDR, French law applies to the present proceedings.
- 50. Neither the Appellant nor the FIA dispute the above, the FIA mentioning however that *"not all the FIA regulations nor all French laws are applicable to the case at stake."*

c) *Conclusions of the Court*

- 51. Having carefully examined the various submissions made by the Appellant and the FIA, whether in writing or at the hearing, the Court rules as follows.

a. *On the question of the admission of the breach*

- 52. The Court rejects the FIA's submission that the Appellant was prevented from raising any argument against the post-race scrutineering which took place on 12 September 2021. The admission by the Appellant's representatives that *"the weight of the [front*

subframe] *was higher than the permitted tolerance and that the inspection and weighing procedure had been carried out properly*” could only bind the Appellant to the extent it would refer to elements of the checking procedure that require his formal approval in order to proceed with the checks, such as for instance, confirming that it was indeed his car’s front subframe that was checked and that the figures on the scales were indeed the ones noted on the report, or that he had indeed had the opportunity to take part in the hearing, etc.

53. However, the issues raised by the Appellant before the Court are related to technical elements and legal arguments that did not require his formal approval beforehand. The Appellant’s right to be heard therefore commands that the latter be given the opportunity to challenge the course of the post-race scrutineering, notably the numerous steps of this procedure mentioned by the FIA which neither he nor his representatives could attend.

54. The Court concludes that the statements made by the Appellant’s representatives at the hearing before the Stewards do not impact his right to raise submissions on the reliability of the measurements made during the post-race scrutineering.

b. On the question of the application of French law and the use of the Greek ASN’s scales

55. The Appellant contends that the scales used by the FIA were not compliant with the applicable French regulations, and that the measurements made by the FIA should thus be declared null and void.

56. The Court notes first that contrary to what the Appellant states in his Grounds of appeal (para. 67 et seq.), two scales and not just one were used to proceed with the measurements, namely one belonging to the FIA (the “FIA scales”) and one belonging to the organisers (the “ASN scales”). The Chief Scrutineer Manual indeed provides that the ASN should provide notably “*a scale up to 30 kgs with a certificate of calibration from [the ASN’s] national calibration institute.*” In this respect, the Court notes further that the use of instruments approved by the ASN is specifically foreseen and mandatory under article 11.14.2.b of the Code, which reads as follows:

“11.14 Duties of scrutineers

11.14.1 Scrutineers are entrusted with all checking of Automobiles (...)

11.14.2 They shall [ed.]:

11.14.2.b use such checking instruments as may be specified or approved by the ASN.”

57. When questioned about the scope of application of Article 11.14.2.b of the Code, the Appellant claimed that it could be interpreted in many ways, including that the Scrutineers should use scales approved by the ASN after they had been calibrated and homologated according to the procedures set under French law.

58. The Court rejects this argument.
59. Indeed, according to *Décret n° 2001-387 du 3 mai 2001 relatif au contrôle des instruments de mesure*, French law accepts that foreign scales which have been homologated or calibrated in accordance with the regulations of the European Union, of which Greece is a member, be sold and used in France. This compatibility is indicated by way of the EU/CE labelling which was present on both scales, as reflected in the various pictures of the scales produced by the Parties.
60. Further, the *Décret n° 61-501 du 3 mai 1961 relatif aux unités de mesure et au contrôle des instruments de mesure*, which was produced by the FIA in its response to the Grounds of appeal, provides under its Article 12 that “*it is prohibited to use in France [emphasis added] measuring instruments that do not comply with the regulatory texts*” (in French: “*il est interdit (...) d’employer (...) en France des instruments de mesure qui ne sont pas conformes aux textes réglementaires*”).
61. Based on the foregoing, the Court notes that French law on measuring instruments has a scope of application specifically limited to the French territory and therefore does not apply to measurements made in another country, namely Greece, where of course such measurements have to comply with the legal requirements set in that particular country.
62. Having concluded that the French law on measuring instruments has no direct application, the Court considered whether the reference to French law in the FIA Statutes, in the Code and in the JDR, implied that those elements of French law should apply by reference to the present case.
63. The Court notes on this point that article 11.14.2.b of the Code excludes such an interpretation given that it orders the scrutineers to use “*such checking instruments as may be specified or approved by the ASN*”. One can only dismiss the Appellant's assertion that all ASNs in the world should approve only those checking instruments, like scales, which are compliant with French law, simply by virtue of the reference to French law, which can be found in the FIA Statutes, in the Code or in the JDR. On the contrary, the only logical interpretation of article 11.14.2.b of the Code leads to the conclusion that it is mandatory for the scrutineers (“*they shall*”) to use the local instruments duly approved by the ASN, the responsibility of the latter being to ensure that such instruments provide accurate results, bearing in mind that such results could be challenged before the Stewards and the FIA Courts, as the case may be.
64. As a consequence, it is also logical that the 2021 World Rally Championship Chief Scrutineer’s Manual provides that it is up to the Scrutineer to ensure “*a scale up to 30 kgs with a certificate of calibration from your national calibration institute.*”
65. As reflected in the certification forms and in the witness statements provided by the FIA in its written documentation, as well as through the declarations of the witnesses at the hearing, the Court concludes that the Greek ASN scales, used by the Scrutineers, did not have to be compliant with French law, which is not applicable to

a measurement made outside the French territory, and therefore that they could be used in accordance with article 11.14.2.b of the Code and the 2021 World Rally Championship Chief Scrutineer's Manual.

c. *On the question of the accuracy of the measurements made by the Scrutineers*

66. Based on the various witness statements and on the pictures produced by the FIA, the Court concludes that both scales were properly calibrated and properly used. Both scales bear the required labels applied by their manufacturers. It appears further that both scales were checked less than one year before their use on 12 September 2021. The ASN scales were indeed checked on 8 September 2021 and were certified by a duly accredited Greek laboratory, namely Tsaousidis Eleftherios-Calibration laboratory, as required by the Chief Scrutineer Manual, and the FIA scales were checked and certified on 18 December 2020 by a duly accredited French entity, namely PMS BECUS.
67. The FIA proved further through the various witness statements provided to the Court, that it had proceeded with additional checks before using the scales. Calibrated weights were indeed used to test the scales, and those scales were switched on well in advance, contrary to what the Appellant stated, without providing any supporting evidence on that point.
68. Based on all the above, the Court is thus comfortably satisfied that the procedure applied during the post-event scrutineering was compliant with the requirements set by the FIA regulations and ensured that the results were accurate, notwithstanding the remarks made by the Appellant in his Grounds of appeal or by the FFSA at the hearing, with respect to the fact that the scales were put on the floor, that some dust would have been present during the measurement and that vibrations could have impacted the results.
69. The Court notes in this respect that the Appellant did not raise any complaints during the checking procedure. It notes further that it had had the opportunity to clean the front subframe after a first measurement. The Scrutineers then measured the front subframe three times with the FIA scales and the ASN scales, which led to the same result on each of the scales, the difference between the two scales – the ASN scales being the only one relevant for the reasons described above - being explained by the difference in the level of accuracy between the two types of scales (50 g vs 5 g).
70. In a nutshell, the Appellant did not provide any convincing evidence that the results of the measurement with the use of homologated, calibrated and double-checked scales were biased by any external element.
71. The Court however, noted that the front subframe was allegedly weighed in Sardinia, and found compliant, with a weight between 12.707 kg and 12.708 kg.

72. If this unofficial measurement tends to prove that front subframe No. 99 was indeed compliant with the regulations when it was delivered by Citroën, it does not exclude that the front subframe had increased in weight due to measures applied to it by the Appellant's team, for instance repainting it in order to protect it against humidity or corrosion. In any event, considering that front subframe No. 99 was not under the custody of the FIA or any official from the moment it was weighed by the Appellant's team in Sardinia until the post-event scrutineering in Greece, the Appellant cannot draw any evidence from this change in the front subframe's weight that would question the accuracy of the numerous corroborating measurements made on 12 September 2021.

d. On the question of the sanction and its proportionality

73. The Appellant does not dispute that the results of the measurements carried out indicated that the weight of the front subframe of its car exceeded the maximum limit set by the regulations.
74. According to Article 1.1.1 of WRC Sporting Regulations "*all drivers, competitors and officials participating in the Championships undertake, on behalf of themselves, their employees and agents, to observe all the provisions as supplemented or amended of the Code, the applicable technical regulations, the present Sporting Regulations, and the supplementary regulations of each rally.*"
75. It is the ICA's longstanding jurisprudence that the competitor's responsibility for any breach of the technical regulations, as in the present case, is of an absolute and objective nature. The intention or negligence of the competitor is irrelevant (see for instance ICA-2013-03 dated 10 September 2013, *G-Drive Racing*), which means that the Appellant must face the sanction linked to a violation of the technical regulations even if his good faith or that of his team is not questioned.
76. Besides, without questioning the Appellant's good faith, the Court notes that the Appellant and his team were clearly aware of the problem faced by the car's subframes, as a similar issue had occurred in the previous rally in Sardinia. This problem even led them to verify immediately the weight of front subframe No. 99. Mr Ducher admitted that the front subframe had been removed between the Ypres Rally and the one in Greece, and that the team had probably cleaned it and protected it with paint. Given the experience on previous front subframes, it would have been logical to verify if the interventions on the front subframe had had an impact on its weight, particularly when one considers that the weight measured by the Appellant's team in Sardinia was close to the limit (12.708 kg vs 12.85725 kg max, namely a "reserve" of 149.25 gr).
77. According to the measurements made, the front subframe of the Appellant's car exceeded the maximum margin of tolerance by 92.75 g, and the fixed nominal weight by 705 g.

78. The Court thus concludes that the Appellant must be sanctioned and, given the ICA's longstanding jurisprudence, the sanction must be disqualification, unless the Appellant can prove that the breach took place under exceptional circumstances (see notably cases ICA-2014-03 dated 26 September 2014, *Campos Racing*, and ICA-2013-03 dated 10 September 2013, *G-Drive Racing*), which it did not.
79. Exceptional circumstances are indeed admitted only under very limited criteria, such as a clerical error or a mistake made in the homologation document (see ICA-2013-03 with reference to ICA-21/2009, ICA 26/2009 and ICA-1/2010 dated 18 May 2010, *Young Driver AMR*).
80. In the present case, the Appellant does not claim that the breach was caused by a clerical error or a mistake in the homologation documentation. He claims that the breach might have been due either to the inaccuracy of the scales, which has been excluded above, or the failure of Citroën, which the measurement made on the front subframe No. 99 in Sardinia also excludes.
81. The Court also rejects the conclusions drawn by the Appellant from the "experiment" that his team performed in order to support his appeal. Assuming that this could be considered as an exceptional circumstance, *quod non*, the Appellant does not demonstrate that this theoretical exercise has any link with the real conditions under which the Greek rally took place. In other words, the "experiment" is totally irrelevant, be it in fact or in law. Moreover, the Appellant's team was requested by the FIA Technical Delegates and the Chief scrutineer to clean the front subframe to ensure that it being overweight was not due to the presence of a foreign substance. This is another reason, if need be, to exclude that the Appellant draws any advantage from this submission.
82. Referring to the Appellant's submission on the lack of sporting advantage related to the breach, and notwithstanding the FIA's submissions that a heavier front subframe could bring a competitive advantage as this would make it stronger, the Court stresses that this submission is in any event irrelevant, due to the very clear wording of Article 1.3.3 of the Code which states that "*if an automobile is found not to comply with the applicable technical regulations, it shall be no defence to claim that no performance advantage was obtained.*"
83. With this in mind, the Court notes that the previous Stewards' decisions produced by the Appellant do not provide any support to his cause. Most of them relate to clerical errors and, in any event, the Court finds no grounds in those decisions to modify the clear and constant precedent of the International Court of Appeal, as quoted above or put forward by the FIA in its response to the Grounds of appeal.
84. Based on all the above, the Court concludes that the sanction imposed by the Stewards must be confirmed.
85. The appeal is thus rejected and the appealed Decision is fully upheld.



VI. COSTS

86. Considering the outcome of the proceedings, the Court leaves it to the Appellant to bear all the costs, in accordance with Article 11.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeal admissible;**
- 2. Rejects the appeal;**
- 3. Upholds Decision No. 3 dated 12 September 2021 of the Stewards of the EKO Acropolis Rally counting towards the 2021 FIA World Rally Championship (WRC3);**
- 4. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 5. Leaves it to Mr Yohan Rossel to bear all the costs, in accordance with Article 11.2 JDR;**
- 6. Rejects all other and further conclusions.**

Paris, 16 November 2021

The President

Thierry Julliard