INTERNATIONAL TRIBUNAL
TRIBUNAL INTERNATIONAL

INTERNATIONAL TRIBUNAL (IT)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Case brought by the
Fédération Internationale de l'Automobile (FIA)

against

Mr Halid AVDAGIC

and

Mr Kerem ORAK

Case IT-2015-01

Hearing of Friday 20 November 2015 in Paris

The FIA INTERNATIONAL TRIBUNAL ("the Tribunal"), which comprised Mr Edwin GLASGOW (United Kingdom), who was designated President, Mr Laurent ANSELMI (Monaco), Mr Didier BOLLECKER (France) and Mr Dirk-Reiner MARTENS (Germany), met in Paris on Friday 20 November 2015 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Prior to the hearing, the Tribunal received and considered submissions and attachments thereto made by Mr AVDAGIC and Mr ORAK, on one side, and by the FIA, acting as prosecutor to the case, on the other side.

The following persons attended the hearing:

on behalf of the FIA:

Mr Sébastien BERNARD, Legal Director
Mr Pierre KETTERER, Head of governance & legal affairs
Mrs Delphine LAVANCHY, Legal coordinator
Mr Jonathan TAYLOR, Legal Counsel
Mrs Lauren PAGÉ, Legal Counsel
Mr Karl-Heinz GOLDSTEIN, Technical advisor (witness)

on behalf of the Respondents:

Mr Halid AVDAGIC, Respondent
Mr Kerem ORAK, Respondent
Prof Dr Erem ALKIN, Advisor
Mr David RONEY, Legal Counsel
Mr Oktay SENER, Legal Counsel

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)

SUMMARY OF THE BACKGROUND FACTS

1. Mr Halid AVDAGIC has since the early 1980s been a rally driver licensed by the Türkiye Otomobil Sporları Federasyonu (the Turkish Automobile Sports Federation-TOSFED), an FIA member and the Turkish national sporting authority (ASN).

2. Mr Kerem ORAK holds a licence for local circuits, also granted by TOSFED.

3. Mr AVDAGIC and Mr ORAK are together referred to as "the Respondents", Mr AVDAGIC having substantial interest in, and Mr ORAK being employed by the company *Avitas*, which developed a new unit called "*Avitas Motorsport*", actively promoting "SuperCar Lites", an innovative new category of cars for rallycross and extreme sports.

4. "SuperCar Lites" differ from "SuperCars", notably as they are not based on the platform of a series production road car; they do not have a steel frame, they have a smaller engine which is located in a different position and they are considerably more affordable.

5. "SuperCar Lites" are therefore eligible not for the FIA World Rallycross Championship but for the RX Lites Cup series, an official support event of the FIA World Rallycross Championship.

6. In 2012, *Avitas Motorsport* executed a joint-venture agreement with *Olsbergs MSE AB (OMSE)* and established with its partner the company *FirstCorner Motorsport Ltd*, in order to promote the RX Lites Cup series.

7. *OMSE* is a Swedish company which develops sports cars for rallycross and extreme sports. It manages three teams, which compete respectively in the FIA World Rallycross Championship, the Rallycross Global Championship and the Scandinavian Rallycross for SuperCars.

8. On 22 May 2015, the Respondents attended the British race of the 2015 FIA World Rallycross Championship at Lydden Hill, having received annual accreditation passes from IMG, the promoter of the championship.

9. In the late afternoon, the Respondents walked down the paddock. Mr ORAK approached the area of the *Marklund* team's pit and, after having looked at the *Marklund* car, knelt down at or under the rear of the *Marklund* car and started to take pictures of it with his phone, notably of its rear suspension. After a few minutes, Mr AVDAGIC shouted the Turkish words "*bahçeye dalan var*" in the direction of the *Marklund* pit and Mr ORAK left the pit shortly thereafter.

10. A few minutes later, as they were walking past the *Marklund* pit once again, a *Marklund* team member approached the Respondents and asked Mr ORAK to delete the pictures he had taken, which Mr ORAK agreed to do. Approximately ten minutes after they had left the area, another *Marklund* team member approached them in a different part of the paddock and asked Mr ORAK to delete the pictures also from the "trash" folder of his phone.

11. On the following morning, 23 May 2015, the Respondents met representatives of the FIA Stewards and of the *Marklund* team. During this meeting, members

of the *Marklund* team argued that the Respondents could have sent pictures of their car to *OMSE* and that Mr ORAK had acted upon instructions from Mr AVDAGIC. Both Respondents disputed those allegations. Mr AVDAGIC stated that Mr ORAK had taken pictures on his own initiative, which Mr ORAK confirmed, and Mr ORAK claimed that he had been solely motivated by his passion for engineering.

12. The Stewards issued minutes of that meeting in the following terms: "*Spy problem in the Marklund team by people of the Rx Lite facturers – all people have been heard – IMG will take off the passes and will see what they can do more in this case.*"

13. In an email dated 12 June 2015, Mr Tim WHITTINGTON, the coordinator of the FIA World Rallycross Championship, designated by the promoter IMG, informed the Respondents that their accreditations were suspended with immediate effect. As a consequence, Mr AVDAGIC missed three races in Sweden, Canada and Norway until his accreditation was returned by IMG at the beginning of September. Mr ORAK's accreditation has continued to be suspended since 12 June 2015.

14. On 15 July 2015, Mr AVDAGIC sent an email to the FIA stating that Mr ORAK's conduct had been unacceptable and had led to his being suspended from any further involvement in the activity of First Corner – RX Lites.

15. On 1 September 2015, Mr WHITTINGTON informed Mr AVDAGIC that "*the return of your accreditation in no way prejudges any decision that FIA may make and you should be aware that its investigation is ongoing.*"

PRE-HEARING PROCEDURE AND DECISIONS

16. The FIA Prosecuting Body sent Notifications of Charges, by email and registered letter, to the Respondents on 28 September 2015. Copies of those Notifications of Charges were also sent to the President of the Tribunal on 28 September 2015, in accordance with Article 6.1 of the FIA Judicial and Disciplinary Rules (the "JDR").

17. In the Notifications of Charges to the Respondents, the Prosecuting Body set out in particular:

    (a) factual allegations in the following material terms:

    "On the occasion of the Competition (defined as the Lydden Hill Competition (United Kingdom 24 May 2015) *you engaged, in the photographing of the rear*

suspension of one of the cars of Team Marklund Motorsport (a team entered in the 2015 FIA World Rallycross Championship) in that team's pit.

More specifically, on the basis of the videos in our possession (attachments No 3 through 5) and your email dated 15 July 2015 (attachment No 6), it has been clearly established that Mr Kerem ORAK took litigious photographs, while [Mr Halid AVDAGIC] *kept watch outside the pit to ensure that no-one would notice your collective actions."*

(b) legal allegations in the following terms:

"Your participation in the abovementioned taking of photographs may constitute a potential breach of Article 3.2(i)d of the FIA Judicial and Disciplinary Rules, as well as a potential breach of Article 12.1 of the ISC, insofar as the act could be prejudicial to the image of the FIA World Rallycross Championship and the reputation of the FIA."

(c) Possible sanctions in the following terms:

i. *Penalties listed in Article 3.2 (ii) of the JDR:*

a) fines,

b) bans on taking part or exercising a role, directly or indirectly, in events, meetings or championships organised directly or indirectly on behalf of or by the FIA, or subject to the regulations and decisions of the FIA,

c) the sanctions provided for in the FIA International Sporting Code, and/or

d) bans on exercising within the FIA any duties whatsoever as an executive officer, a member of a commission, or a president of a commission, or any duties of any nature whatsoever on behalf of the FIA and/or within a body of the FIA.

ii. Penalties listed in Article 12.3 of the International Sporting Code (the "ISC"):

- *reprimand (blame);*
- *fines;*
- *obligation to accomplish some work of public interest;*
- *deletion of a Driver's qualifying lap(s);*
- *drop of grid positions;*
- *obligation for a Driver to start a race from the pit lane;*
- *time penalty or penalty lap;*

- *drop of places in the classification of the Competition;*
- *drive-through penalty;*
- *stop and go;*
- *exclusion;*
- *suspension;*
- *disqualification.*

iii. Pursuant to Article 8.3 of the JDR, the Tribunal may order the party being prosecuted to pay all the costs incurred by the FIA prosecuting body in the period from the beginning of the investigation until the pronouncement of the decision of the Tribunal, and those pertaining to the procedure before the Tribunal from the commencement of the matter until the pronouncement of the decision of the Tribunal. The Tribunal may decide to set a lump sum for the costs.

18. The Respondents filed their Responses to the Notifications of Charges on 26 October 2015 and invited the Tribunal:

    - *to dismiss these disciplinary procedures in its* [sic] *entirety;*
    - *in the alternative, in the unlikely event that Mr AVDAGIC and/or Mr ORAK is found to have breached Article 3.2(i)(d) of the JDR and/or Article 12.1 of the ISC, an order declaring that a penalty has already been imposed in relation to the incident in question by the FIA Championship Coordinator and it would therefore be inappropriate to impose a second penalty; and*
    - *an order requiring the FIA to bear the costs of the disciplinary procedure.*
    - *In addition* (…) *to issue a recommendation to the Prosecuting Body that it procure that all previous penalties imposed in this matter also be annulled or terminated forthwith.*

19. The FIA filed its Observations in Response on 10 November 2015 and invited the Tribunal to:

    - *find that each of the Respondents has breached Article 3.2(i)(d) of the FIA Judicial and Disciplinary Rules and/or Article 12.1 of the International Sporting Code;*

- *impose such sanctions for those breaches as to the FIA International Tribunal seem just and proportionate; and*
- *order the Respondents to pay the costs referenced in JDR Article 8.2.*

20. No third party asked to make written or oral observations.

21. During the proceedings, various requests were filed by the Parties and the President of the Tribunal issued four decisions ruling on those requests and on other procedural matters. As these decisions were not contested, there is no need to repeat any of them, save for the Request made on behalf of the Respondents on 16 November 2015 to admit into evidence six (6) photographs, which request, based on the right of any Party to rely on the value of the evidence produced before the Tribunal, in this case the said photographs, was granted by the President of the Tribunal on 17 November 2015.

22. Prior to the hearing on 20 November 2015, the Tribunal judges read all submissions which had been served on it together with all documents annexed thereto.

HEARING

23. At the commencement of the hearing the Tribunal established that the parties were content to follow the procedure as helpfully outlined in advance of the hearing by the Respondents' email dated 16 November, save for some economies of time to reflect the state of emergency which existed in Paris. It was accordingly accepted and agreed that neither party needed or wished to add any oral opening to the matters set out in their respective written submissions but that FIA would present the video evidence on which its case principally depended and would call its one witness who would be cross examined on behalf of the Respondents; there was then a short break to permit the Respondents' legal counsel to take any necessary further instructions from the Respondents but that there would be no lunch adjournment; the Respondents' legal counsel would then call two witnesses whom the FIA's legal counsel would cross examine; the FIA's legal counsel would then make his Closing submissions followed by the Respondents' legal counsel. At the conclusion of the hearing it was agreed by the Parties, with the approval of the Tribunal that, in view of the exceptional circumstances and without setting any precedent for future cases, the Tribunal would arrange for a transcript of the oral evidence to be made available to the parties by Friday 27 November 2015; that FIA would serve its written closing on the Tribunal by 5.00pm (CET) on Monday 30 November 2015, which will immediately be served on the Respondents by the Tribunal; and Respondents would serve their written closing on the Tribunal by 5.00pm (CET) on Tuesday 1 December 2015, which will immediately be served on the FIA by the Tribunal.

24. Save for the specific issue as to the competence of the FIA, which is addressed under paragraphs 26.2, 27.2 and 32.2 below, no issue with respect to the Tribunal's competence in this matter was raised by either Party. While reserving the right to argue that the suspension, decided by IMG, constitutes in reality a sanction imposed on behalf of the FIA, the Respondents took part in the hearing without any reservation as to the Tribunal's competence to conduct it. In these circumstances, the Tribunal therefore recognised itself as competent to rule on the present case.

THE PARTIES' SUBMISSIONS

25. The FIA alleges that the Respondents engaged jointly in the photographing of the rear suspension of one of Team *Marklund* Motorsport's cars, in that team's pit, Mr ORAK taking photographs while Mr AVDAGIC kept watch outside the pit. The FIA thus contends that the Respondents breached Article 3.2(i)(d) of the JDR as well as Article 12.1 of the ISC, and that in the sense of those provisions the Respondents' acts were prejudicial to the image of the FIA World Rallycross Championship and to the reputation of the FIA.

THE RESPONDENTS' POSITION

26. The Respondents' position, as stated in their submission in Response to the Notifications of Charges dated 26 October 2015, and in points made in the course of the hearing and confirmed in the written Closing arguments made on 2 December 2015, can be summarised as follows:

    26.1. Because of the nature of the proceedings before this Tribunal, and the potential severity of the sanctions liable to be pronounced at the conclusion thereof, the conduct of the said proceedings must be "*consistent with the letter and spirit of Article 6*" of the European Convention on Human Rights ("ECHR"), and specifically (a) the Prosecuting Body must set out its charges with sufficient specificity to allow the charges to be clearly understood, so that an effective defence may be mounted; (b) a presumption of innocence must apply; (c) the burden of proof associated with all charges must rest with the Prosecuting Body; and (d) the standard of proof must be 'beyond reasonable doubt'.

    26.2. The Notifications of Charges did not justify the competence of the prosecuting body acting against the Respondents.

26.3. There were serious formal deficiencies in the Notifications of Charges which are inconsistent with fundamental procedural fairness. They fail to set out charges with sufficient specificity to allow defence rights to be exercised and/or to explain what prejudice has been caused, either to the image of the Championship or to the FIA, so as to constitute a breach of the JDR or ISC. The Respondents further contend that deficiencies in the disciplinary inquiry restrict the scope of evidence that can now be relied upon.

As to the disciplinary proceedings brought against the Respondents, Mr AVDAGIC had notified the FIA in his email dated 15 July 2015 that *Avitas* had started a *"disciplinary procedure for [Mr ORAK]. This will be finished by suspension of his activities in FirstCorner Motorsport – RX Lites operations, clearly. Our company can not tolerate this kind of actions even though all of these are generated by curiosity"*.

Mr AVDAGIC confirmed in his oral testimony that he and two other shareholders in *Avitas* had conducted an internal inquiry into the conduct of Mr ORAK. However, the Tribunal was provided with no documents relevant to this inquiry and was not informed of the allegations made against Mr ORAK in this context, or what role Mr AVDAGIC played in the inquiry, or what reasons were given as justification for the above-mentioned suspension of activities.

26.4. Furthermore, the Respondents claim that the Notifications of Charges did not allow them to distinguish properly between the facts and the allegations made against them, or to understand precisely the legal basis of these allegations.

26.5. The same applies to the evidence relied upon in the Notifications of Charges, including the video evidence and the email from Mr AVDAGIC, which in no way substantiate the allegation that Mr AVDAGIC was complicit in Mr ORAK's spying in the *Marklund* pit.

26.6. The Respondents consider that the FIA failed to establish that they had breached the relevant provisions of the JDR or of the ISC, principally because:

(a) the Respondents were not competing in the 2015 FIA World Rallycross Championship;

(b) there was no way in which the Respondents could have obtained and then misused, in the design of SuperCar Lites, any improper insight into a design secret of *Marklund*;

(c) the absence of any competitive advantage obtained through the acts alleged against the Respondents removes, consistent with the *FIA World Motor Sport* Council's decision handed down in the McLaren case *(FIA World Motor Sport Council's Decision dated 13 September 2007)*, any justification for the present disciplinary proceedings and for the sanctions liable to be pronounced upon their conclusion;

(d) photographs of the *Marklund* team's car published in the media and on the internet show that the Supercar Lites model produced by *Avitas* is of an entirely different design;

(e) all rallycross teams are potential customers of the Respondents' company *Avitas*, and the latter would have never put at risk their relationship with *Marklund* in order to favour *OMSE*;

(f) notwithstanding the statements of the witness called by the FIA relating to the design secret of the rear suspension of the *Marklund* team's car, the subject of Mr ORAK's photographs cannot be considered as confidential since it was already freely available in the public domain, either via pictures posted on the internet or via the screens that can be seen by everybody, set up in different areas of the circuit such as washing areas where the cars are filmed from virtually every angle.

(g) the videos which were shown illustrate six (6) occasions on which members of the public can be seen to be taking photographs, from behind the barriers, of cars in the SDRX pit (opposite to *Marklund's*), while some parts of the underside of SuperCars owned by other teams can be seen in numerous photographs which are in the public domain.

26.7. The FIA Stewards and/or the FIA World Rallycross Championship Coordinator have already imposed a penalty on the Respondents by suspending their accreditations. A further penalty would thus be inappropriate as in breach of both Article 50 of the Charter of Fundamental Rights of the European Union and the *ne bis in idem* or "double jeopardy" principle.

FIA'S POSITION

27. The responses of the FIA to the submissions made by the Respondents can be summarised, in essence, as follows:

27.1. The FIA accepted that the Respondents have a right to procedural fairness, including the right to have sufficient notice of the case brought against them; and that the burden of proof was on the FIA, but: (a) rejected the contention that these proceedings 'have a criminal or quasi criminal character' and (b) asserted that the standard of proof was not the criminal one of "beyond reasonable doubt" but that of the "comfortable satisfaction of the Tribunal", although in Closing Submissions, FIA submitted that the correct test was that of "the balance of probabilities" which is taken from the test in civil cases in common law jurisdictions. In support of its arguments under (a) the FIA relied principally on the principles established by the Swiss Federal Tribunal in its decision in *Gundel v FEI and CAS,* the English authority of *Bhatt v GMC,* and the decision of CAS in *I v FIA;* and under (b) on the principles established by CAS in its decision in *FK Pobenda & others v UEFA.*

27.2. The competence of the Tribunal to hear the present case is established by the fact that the acts that gave rise to the charges were committed during a competition organised by the FIA while the Respondents held licences issued by members of a National Sporting Authority which was and still is a member of the FIA.

27.3. The Notifications of Charges clearly explain the legal foundation of the FIA's case in relation with the facts at the basis of the prosecution, namely the prejudice likely to be caused to the image of the FIA World Rallycross Championship and to the reputation of the FIA. This gives a clear understanding of which rules of the JDR and of the ISC have been breached, namely Article 3.2(i)(d) of the JDR and Article 12.1. of the ISC. As to the manner in which the conduct complained of could be prejudicial to the Championship and/or the FIA, the latter asserted that the Respondents' conduct, which had caused Mr AVDAGIC to be extremely angry and which had led to the indefinite suspension of Mr ORAK, was self-evidently damaging to the reputation of both the Championship and the FIA.

27.4. The Notifications of Charges are unequivocal as to the difference between the allegations and the established facts.

27.5. For the FIA, it is thus clear that Mr AVDAGIC had participated, alongside Mr ORAK, in the conduct complained of and that the account he had given

of his participation was wholly misleading and dishonest. In its Closing Submissions, the FIA also goes back over a question which was put in cross examination to Mr AVDAGIC during the hearing. It puts forward in this respect that Mr AVDAGIC's movements and behaviour, as recorded by the video evidence, clearly establish that he was aware of what Mr ORAK, who deleted the photos from his telephone only because a member of the *Marklund* team and not Mr AVDAGIC had asked him to do so, was doing.

27.6. The FIA considers that the suggestion that knowledge of *Marklund's* secret information about their suspension would have been of no benefit to the Respondents is irrelevant, when the McLaren case has shown that simply getting technical secrets or know-how from a third party without his authorisation already constitutes a breach of the aforementioned provisions. The concept of "competitive advantage" is relevant only when it comes to determining the quantum of the sanction.

27.7. For the FIA, there can be no doubt that the pictures were taken with the object of stealing confidential information from *Marklund*, as borne out by Mr ORAK's own evidence that the anti-roll bar system was one that he *"had not seen before"*; that *"he did not understand how it could be so thin and why it was positioned in this way"*; and that he had taken the photographs with the intention of *"discussing the technical issues with Mr Enes* [design engineer of *Avitas Motorsport*] *and figure out how the anti-roll bar system worked."* The FIA also stressed the fact that at the time *Marklund* had openly expressed to both Respondents its concerns about the intentions that had motivated their acts and had followed this up by making a formal complaint to the Stewards of "spying".

27.8. The FIA bases its case on the written and oral evidence of Mr GOLDSTEIN, in charge of Rallycross within the FIA, from which it emerges that information concerning the rear suspension components must remain confidential and that, contrary to what the Respondents claim, information obtained by improper means would have been very useful, both for SuperCar Lites and for *OMSE*, the partner of *Avitas Motorsport*.

27.9. Mr GOLDSTEIN declared that neither Rallycross cars nor SuperCar Lites required to be homologated, drawing the Tribunal's attention to Exh A-3 of the Respondents' submissions and in particular the observation made in paragraph 8.1 according to which *"the operating method and the design of the suspension system are free"*. Mr GOLDSTEIN accepted that while the six (6) photographs produced by the Respondents and admitted into evidence (21. above) could allow the type of suspension on the vehicle in

question to be identified, they could not reveal any pertinent details of its design.

27.10. In response to questions put by the Respondents' counsel, Mr GOLDSTEIN indicated that the information relating to the anti-roll bar should be regarded as being of relative importance for knowing the design of the suspension. He also accepted that it would be difficult to identify the material of which the anti-roll bar was constructed, likewise its dimensions and angles, from the photographs.

27.11. Mr GOLDSTEIN accepted that although the public had access to the paddocks, the pits were in restricted areas, reserved for the teams, while declining to answer questions concerning the layout of the pits, their accessibility, or the safety measures put in place by the teams.

27.12. On being questioned about the first photograph relied upon by the Respondents as Exh A-10, Mr GOLDSTEIN did not accept that one could see the precise location of the mounting points, and said that he could not, from this photograph, work out the precise or important points relevant to the design of the suspension.

27.13. In respect of photograph A12, he accepted that some of the components of the rear suspension could be seen.

27.14. As to the other photographs, Mr GOLDSTEIN declared that he did not consider it useful to comment on what other teams might put into the public domain.

27.15. He subsequently stressed that in order to clearly understand the suspension system concerned, it was not sufficient to know only the positions of the anti-roll bar mounting points – it was important also to know the position of all the components of the suspension.

27.16. The Tribunal permitted further cross examination of Mr GOLDSTEIN by the Respondents' counsel, specifically about whether the situation illustrated by the Respondents' Exhibit 17 reflected the fact that, as a routine matter, teams did expose their vehicles in the manner illustrated in that photograph, in areas to which the public had access. It transpired, however, that Mr GOLDSTEIN had no actual experience of having been in such areas.

27.17. *Marklund* have a legitimate and important interest in wanting to protect their technical secrets and it is crucial for the FIA and for motorsport in general to ensure that this interest is respected and protected in order to

support and protect the investments made by all teams in research and development. As indicated in the FIA's Statutes or in its Code of Ethics, the FIA must preserve the teams from acts which are immoral or unethical. All stakeholders in motorsport are thus entitled to expect the FIA to take all necessary steps in order to sanction any breach of those provisions.

27.18. The additional photographs do not establish that *Marklund* had put into the public domain any information about what they plainly did regard as being confidential information relating to the detail of their suspension design.

28. In addition to responding to the Respondents' contentions, the FIA also relied on the fact that Mr AVDAGIC himself had admitted in his email of 15 July 2015 that the facts of the case were unacceptable and that they had led to the suspension of Mr ORAK by his company.

29. As to the sanction, the FIA stresses that no sanction has been or could be pronounced by the Stewards as the Respondents were not part of the World Rallycross Championship. It submits further that in any event, the Prosecuting Body could have appealed any decision of the Stewards and brought the case before the Tribunal.

30. The FIA expressed no view during the course of the hearing as to the appropriate penalty which the Tribunal should impose in the event that it found that breaches had been committed. In its written Closing Submissions, however, the FIA suggests that an appropriate sanction might have been to ban each of the Respondents, for a period of not less than 12 months, from:

(1) "*taking part in any Competition, either within the territory of the ASN which has pronounced the sentence of suspension or in that of any country acknowledging the authority of the FIA" (ISC Articles 12.3.1.l and 20);*

(2*) "taking part or exercising a role, directly or indirectly, in competitions, events or championships organised directly or indirectly on behalf of or by the FIA, or subject to the regulations and decisions of the FIA" (JDR Article 3.2(ii)(b); ISC Article 12.3.6)*; and

(3) "*exercising within the FIA any duties whatsoever as an executive officer, a member of a commission, or a president of a commission, or any duties of any nature whatsoever on behalf of the FIA and/or within a body of the FIA".*

31. The FIA contended that such a sanction would have a limited adverse impact on the Respondents because they do not take part in any international-level competitions and have professed little interest in national-level competitions;

they would not be prevented from continuing to produce and sell their various products, including SuperCar Lites, to any existing or new customers; nor would they be prevented from promoting the US series and the Scandinavian series that feature their SuperCar Lites, because those series are not organised directly or indirectly by or on behalf of the FIA; nor are they subject to the regulations and decisions of the FIA.

FINDINGS OF THE TRIBUNAL

32. Having considered carefully all of the written submissions made by the Parties, the video evidence produced with the submissions, the evidence contained in the written statements, and the oral testimony given by Mr GOLDSTEIN, Mr AVDAGIC and Mr ORAK during the hearing, the Tribunal notes that all the Parties have recognised the fair nature of the proceedings in accordance with Article 6 of the ECHR which, incidentally, is not applicable to the present case.

32.1. While the Tribunal endorses the submissions of both Parties to the effect that proceedings before this Tribunal must be, and be seen to be, procedurally fair, the Tribunal firmly rejects the suggestion that it is properly to be regarded as, or compared to, a Criminal Court, sitting in any jurisdiction, applying principles of criminal law or imposing criminal sanctions. Further and in any event, despite the complaints which were made on behalf of the Respondents as to the manner in which this matter had, or had not, been investigated prior to its being referred to this Tribunal, it does not understand it now to be submitted that any part of the procedure which was followed either in preparation for the hearing, or by the Tribunal in the conduct of the hearing, was capable of affecting the fairness of the hearing, so as to have rendered it in any way unfair or contrary to Article 6 ECHR – even if that had applied to these proceedings, which the Tribunal does not accept it did.

32.1.1. There is no jurisprudence cited for that purpose by the Respondents which establishes or even supports the suggestion that this Tribunal should be likened to a criminal court; there is abundant jurisprudence to support the opposite claim, such as the decision of the Swiss Federal Tribunal in its ruling on *Gundel v FEI and CAS* which declared: *"it is generally accepted that the penalty prescribed by regulations represents one of the forms of penalty fixed by contract, is therefore based on the autonomy of the parties…and has nothing to do with the power to punish reserved to criminal courts…."* However, the Tribunal is

conscious of the fact that allegations of personal wrong-doing, and of untruthful explanations of conduct, are extremely serious and has accordingly been mindful of the need to address these matters with the same care, and presumptions in favour of those accused of misconduct, as the Tribunal would have done if it had considered itself to be bound by Article 6 ECHR.

32.1.2. The Tribunal also rejects the contention that it should adopt the criminal standard of proof. It does so principally because it is not a criminal tribunal, applying the criminal procedure of any jurisdiction, making findings of criminal conduct and imposing criminal sanctions. There is abundant authority to support that principle, and none which contradicts it. The contention which was advanced on behalf of the Respondents was expressly rejected by CAS in the decision in *Pechstein v ISU*. While it has been decided in some sporting bodies, notably the British Horseracing Appeal Board, that the civil standard of proof, being the "balance of probabilities", may be applied, the Tribunal considers that the FIA's submission that this Tribunal should adopt the standard of "comfortable satisfaction", as set out in the CAS decision in *KK Pobeda and others v UEFA* is appropriate. The Tribunal has accordingly asked itself, when addressing the factual issues in this case, whether it is comfortably satisfied with the conclusions that it has reached.

32.2. The Tribunal also considers itself competent to hear any complaint brought by the FIA about acts or misconduct that could be harmful to the image of the motorsport competitions that it organises, or to its reputation, allegedly committed by holders of licences issued by a National Sporting Authority on behalf of the FIA of which it is a member. It also accepts that the question of whether or not the presumed perpetrator of these acts or misconduct took part in the events or competitions during which they were allegedly committed is clearly irrelevant, as the duty to respect sporting ethics binds all licence-holders irrespective of whether they participate in a particular event. Thus, for example, in the event that a Formula 1 driver and a senior member of the team for which he drove were to behave in a seriously improper manner during another motorsport event (rally, karting or other), the FIA would be perfectly entitled to bring the matter before the Tribunal.

32.2.1. The Respondents also assert that the FIA's case is inadmissible, since the facts on which it is based could not give rise to the imposition of a sanction by the Tribunal. Indeed, they claim that

Mr AVDAGIC and Mr ORAK have already been penalised through the suspension of their badges for accessing the events, decided by IMG, the organisation entrusted by the FIA with the promotion of the World Rallycross Championship, after the Stewards at Lydden Hill had contacted Mr WHITTINGTON, the events coordinator. The Respondents deduce from this that the imposition of a sanction against them by the Tribunal would be contrary to the "double jeopardy"/ *ne bis in idem* rule.

32.2.2. In this respect, the Tribunal notes that in an email dated 12 June 2015, Mr WHITTINGTON informed the Respondents that the matter "*is being investigated by FIA. Pending the outcome of that investigation your accreditation for World RX events is suspended…*"

32.2.3. The suspension, decided by IMG in the course of the investigation conducted on behalf of the FIA, of the Respondents' right to access the rallycross events thus could not, *de jure*, be considered as a sporting sanction, but rather as a protective or safeguarding measure that the organiser of the rallycross championship was justified in taking in the interest of the proper running of the events for which it is responsible. Thus, even if it is possible to consider that the *"ne bis in idem"* rule is a general principle of law which, in general, may be applied beyond the strict limits of the proceedings and of criminal law, the FIA's bringing the matter before the Tribunal, in this case, is not inadmissible in respect of this rule.

32.2.4. Because there was no challenge to the jurisdiction of this Tribunal, and because this Tribunal is not conducting any kind of appeal from any decision which IMG made, it is unnecessary and would be potentially unfair to individuals who have not been heard, to go further than to note that IMG expressly drew attention to the fact that an FIA investigation was on-going. Faced with the evidence that had been provided to IMG, which is examined in detail below, the Tribunal considers that it was right for the matter to be referred to FIA in order that the Prosecuting Body could consider it. It is important, however, in view of what appears to be a suggestion that an unfair investigation was conducted, in which the Respondents were not heard, to have regard to what the FIA's Prosecuting Body actually did: it made "allegations" against both Respondents that their conduct "*<u>may</u> constitute a*

potential breach of Article 3.2.(i) d insofar as this act could be prejudicial to the image of FIA…." [emphasis added]

32.2.5. The same applies to the hearing before the Tribunal, prior to which the Respondents were validly informed of the facts alleged against them and were given adequate notice to set out the arguments in their defence. Before the Tribunal, they were permitted and invited to appear, be represented, call on any evidence, produce any document, express themselves orally and make any submission that they wished to – and did so.

32.3. In considering the alleged deficiencies in the Notifications of Charges, the Tribunal is satisfied that, unlike "charges" in a criminal case, the purpose of the Notifications of Charges is simply to put Respondents on notice of the matters which are being referred to the Tribunal, with sufficient particularity to enable Respondents to deal with them.

32.3.1. The Tribunal accordingly looked critically at what appears to be the real issue: did anything that was included in or omitted from the Notifications potentially prejudice the fairness of these proceedings, having regard to the finding that they are not criminal in nature? The Tribunal has looked with care at complaints which are made on behalf of the Respondents in respect of the inquiries which were conducted before this matter came to the attention of FIA, and at the fact that Mr AVDAGIC's own email dated 15 July 2015, to which further reference is made below, must have been intended, for whatever reason, specifically to draw FIA's attention to his own view of the seriousness of what had taken place and to the fact that a "*disciplinary procedure*" had already resulted in the suspension of Mr ORAK, and that it expressed "respect for the FIA's decision and outcome of the incident".

32.3.2. Having duly had regard to the adversarial principle and listened to all the arguments which were made by the Parties in the course of the hearing and in particular the evidence given by the Respondents, the Tribunal considers that the latter were sufficiently informed of the allegations being made against them and of the factual and regulatory basis on which those allegations were made. It was not submitted to the Tribunal that either Respondent had been prejudiced in any way in his preparation of his defence by any lack of understanding of the allegations that were being made against them.

32.3.3. Insofar as it was submitted on behalf of the Respondents that the Notifications of Charges did not inform them of the way in which it was going to be submitted to the Tribunal that their conduct "*could be prejudicial to the image of the FIA World Rallycross Championship and the reputation of the FIA*", the Tribunal repeats that the Respondents have rightly asserted that this was and is a judgement for the Tribunal, and not FIA, to make. In the light of the evidence that was heard, that: (a) it would be plain to any fair-minded participant in motorsport that the admitted conduct was so prejudicial; and that: (b) in the light of the views expressed by Mr AVDAGIC in his email of 15 July 2015; the "inquiry" in which both Respondents participated, and the admissions which Mr ORAK made and the manner in which he did so, it is plain beyond sensible argument that both Respondents regarded what was done as having brought shame on themselves and on motorsport.

32.4. The Tribunal applied the test which is set out in (32.1.2) above to the specific complaint on behalf of the Respondents that the Notifications of Charges failed properly to distinguish between "fact and allegations". The essence of that complaint was that the manner in which the Notifications of Charges were drafted trespassed on the Tribunal's function. Two specific points were made which are considered to be fair: (i) it was not for FIA to notify anyone of the "fact" that anything had been "clearly established"; and (ii) the use of the word "litigious" was inappropriate. The Tribunal respectfully agrees with both points but asks itself: where does that take us? It has, rightly in the Tribunal's view, been accepted on behalf of FIA, as it was in their written Response, that it is indeed a matter for the Tribunal to decide what has, and has not, been established. As to the word "litigious", while the point taken on the English translation was fair, the explanation is to be found in the translation of the French "litigieuses" – which might better have been translated in this context as "contentious". Once those specific issues have been resolved the Tribunal does not consider that the wording of the Notifications of Charges could have misled the Respondents in any way and it is noted that it has not been alleged that it did. Insofar as the Respondents, or either of them, maintain any submission to the effect that the proceedings leading to the hearing before this Tribunal were in any way unfair:

32.4.1. that submission is rejected because they were not; and because no case of unfairness was explained. Further, insofar as it is argued that the Respondents should have been given the opportunity of cross examining *Marklund*'s witnesses in order to discover what

it was about the design of their suspension that they regarded as secret (in effect to conduct the very exercise which Mr ORAK had intended to conduct with his colleague) the Tribunal regards that submission as seriously and self-evidently flawed; and

32.4.2. insofar as it is now contended that the procedure which preceded the hearing was unfair, the Tribunal considers it ironic in the extreme that any such complaint could have been made, at least on behalf of Mr AVDAGIC, in view of the following matters:

32.4.2.1. He himself had been party to a disciplinary inquiry on which he had sat, notwithstanding his personal involvement in the events being inquired into, and his being closely related to Mr ORAK;

32.4.2.2. The inquiry had resulted in the indeterminate suspension of Mr ORAK, as a result of events which, on Mr AVDAGIC's case, involved nothing more serious than "trespassing" into a prohibited area of the paddock.

33. The Tribunal turns next to consider the submission made specifically on behalf of Mr AVDAGIC, but also supported by Mr ORAK, to the effect that no proper case was or could be made out of the evidence against Mr AVDAGIC, who argued that he was a witness in good faith, unaware of what Mr ORAK was doing, and that he shouted what was either a reprimand to Mr ORAK or a warning to the *Marklund* team as soon as he realised where Mr ORAK was and what he was doing.

33.1. It was on this aspect of the case that the Tribunal was presented with video evidence (audio and pictures), commented on by both Parties with considerable care.

33.2. It is therefore up to the Tribunal to decide whether or not the FIA's allegations against Mr AVDAGIC can be established to its comfortable satisfaction. There were a number of matters which, both individually and collectively, completely satisfied the Tribunal that the account which Mr AVDAGIC gave to it was inaccurate and deliberately misleading:

33.2.1. One of the most telling facts, which Mr AVDAGIC himself stressed, was the warning which, according to both his written and oral evidence, he shouted at *Marklund* staff in order to draw their attention to what Mr ORAK was doing. The Tribunal considers

this assertion fallacious and rejects it as being deliberately misleading and dishonest, for several reasons:

33.2.1.1. It is wholly inconsistent with the explanation which he gave, in two places, in his written statement, the accuracy of which he verified (subject to a far less material matter which he carefully corrected) at the commencement of his evidence. What he had written and signed was: "*So I began to walk across the road and shouted at Kerem in Turkish "Bahçeye dalan var", which roughly translates as "There is someone jumping into the garden." This is an old Turkish phrase used to show disapproval to a naughty child for doing something which they should not be doing. My intention was to show my disapproval to Kerem, not warn him*".

33.2.1.2. It was clear from the videos that there was no member of the Marklund team in their pit at the time when the shout can be heard, nor did Mr AVDAGIC suggest that there was any;

33.2.1.3. If Mr AVDAGIC had intended the warning to be given to and understood by any member or members of the *Marklund* team, it is clear that he would have spoken in English which he speaks fluently, as he did in these proceedings, without any hesitation or difficulty, and he was unable to explain why he had not done so;

33.2.1.4. A very short time after the shout can be heard on the video, a member of the *Marklund* team can be seen to approach the pit and himself to shout "…*no pictures*". It is plain that this individual must have been within Mr AVDAGIC's field of vision, approaching the *Marklund* pit, at the time when he shouted his warning, and it seems clear that it was in fact his approach of which Mr AVDAGIC was warning Mr ORAK and the Tribunal rejects the suggestion made on his behalf in the written Closing Argument that there is or could be some innocent explanation for the clear and obvious difference between the first and second explanations that both witnesses gave on this matter;

33.2.1.5. Also, Mr AVDAGIC can be seen standing close to the barrier to the *Marklund* pit, looking at it, for some seconds before he shouted his warning. During that time, according to the uncontested evidence of Mr ORAK in one version of the account he gave, he was not under the car but "*kneeling at its rear with his head close to the ground*". That position and/or his alternative description of having been "*under the car*" must have been very obvious and would have been immediately apparent to anyone standing in the position in which Mr AVDAGIC can be seen to have been;

33.2.1.6. If Mr AVDAGIC's actual intention had been to warn members of the *Marklund* team that something of which he seriously disapproved was being done, in their pit, by a member of his staff, to whom he was closely related, the Tribunal finds it inconceivable that he would have done so in Turkish instead of English which he speaks very well, and that he would not have offered some explanation or expression of regret when that individual was confronted, a few minutes later, by a member of the *Marklund* team whom he told the Tribunal he knew well. In fact, his own evidence which on this point is clearly confirmed by the video, is that he turned his back on his relative and on his good friend and walked away.

33.2.2. Mr AVDAGIC also declared his irritation was not that his nephew had been taking photographs, but simply because he had "*trespassed*" beyond the pit barrier, the sole purpose of which was to ensure that those working on cars could do so without the intrusion of third parties. The Tribunal cannot and does not need to speculate as to why Mr AVDAGIC gave that account orally; it is sufficient to say that the Tribunal is sure that this too is false and deliberately misleading for the following reasons:

33.2.2.1. Mr AVDAGIC and Mr ORAK had stated in writing, as part of a formal submission of their case to the Tribunal, that it had been the taking of photographs which had been the cause for concern on the part of the former and the reason for angry complaint to the latter;

33.2.2.2. The account which Mr AVDAGIC gave orally to the Tribunal of his understanding of the purpose of the barrier being solely in order to ensure that mechanics could work without inconvenience was manifestly absurd and incredible;

33.2.2.3. In fact, if Mr AVDAGIC had genuinely believed that the only "*error of judgment*" (as it was described in the Respondents' Closing argument) of which his nephew had been guilty was in trespassing into an area marked off by a barrier in order to ensure that work was not impeded, the Tribunal finds it inconceivable that Mr AVDAGIC, or any fair-minded and responsible employer, could or would have thought it right indefinitely to suspend Mr ORAK;

33.2.2.4. In these circumstances, the Tribunal considers that Mr AVDAGIC's oral evidence to the effect that his only concern was as to the "*trespass*", was also absurd and incredible.

33.2.2.5. In making those findings, however, it should be added that the Tribunal disregarded, as it was invited to by both parties, the implicit assertion in the Notifications of Charges that Mr AVDAGIC's 15 July email constituted evidence that he had knowingly participated in Mr ORAK's taking of the photographs.

33.3. Turning to the issue of whether whatever Mr ORAK photographed was confidential, the Tribunal is satisfied on Mr ORAK'S own evidence that he believed that it was. On this issue the Tribunal accepts FIA's submissions as set out under paragraph 27.7 above, and there is no need to repeat them. The Tribunal rejects the case which was advanced at considerable length in the Respondents' Closing submissions. In essence that submission was to the effect that, absent direct evidence from *Marklund* that they did regard their design as confidential, the Tribunal should ignore all the circumstantial evidence that it was and find, without there being any evidence to support the submission, that photographs which the Tribunal has not seen, but which took some time to take, at very close quarters, depict what can be seen even more clearly in material which is in the public domain. That submission is rejected.

33.4. Additionally, in order to come to a conclusion that *Marklund* did not regard as confidential what one of their employees saw, and complained about, being photographed, the Tribunal would have been obliged: (i) to disregard Mr ORAK's own admissions; (ii) to ignore Mr AVDAGIC's admitted reaction to what he says he saw; (iii) to regard the complaints which *Marklund* made directly to the Respondents: (a) in the immediate shouting of "*hey – no pictures*"; (b) in their prompt insistence that the photographs be deleted; and (c) in shortly thereafter tracking down the Respondents and insisting that the pictures were deleted also from the "trash" file on the phone, as having been an elaborate and unnecessary pretence; and (iv) to find that the complaints of "spying" which *Marklund* went on to make to the Stewards had been disingenuous. The Tribunal declines to come to all or any of those conclusions – any one of which would be an answer to the Respondents' Closing submissions. Note is also taken of the fact that, in the Respondents' Observations on the Notifications of Charges it was expressly accepted that "*Mr Orak photographed the rear suspension of a Marklund car*" whereas at the hearing it was claimed that the only part which had interested him and which he had photographed had been the anti-roll bar. There is no need for speculation as to an explanation for this change but it is noted as another example of the extent to which the Respondents changed their evidence when it was considered to be in their interests to do so, and the suggestion that was put to Mr ORAK in examination in chief that it had been "*FIA…suggesting that you were interested in other parts of the Marklund rear suspension*" is firmly rejected. In view of the fact that this question was asked by Counsel who had signed the Observations which are quoted above, this is regarded as unfortunate.

33.5. The Tribunal rejects the submission which is advanced in the Respondents' Closing Argument that *"The photographs at issue did not capture anything secret"*. Because that statement is repeated many times, and developed in the written closing at considerable length, the Tribunal has looked at it with care and sets it out here in full:

"Photographs similar to those at issue are easily found on the internet since Marklund and the other SuperCar teams do not treat the underside of their cars as secret. Moreover, photographs similar to or even more detailed than those at issue easily taken by members of the public and SuperCar competitors in the public areas…"

The Tribunal finds those assertions, which were advanced as if they had been established fact, to be wholly unsupported by any evidence – principally because the Tribunal does not know what the photographs "*at*

issue" did show and the submission that any other photographs might be *"even more detailed"* therefore seems to be meaningless but misleading. Further, in deciding whether or not the taking of the photographs at issue were prejudicial to the image of the FIA or its bodies, the Tribunal considers that it has to look more closely at what was intended than at what may have been achieved. It is clear beyond argument that the intention was to take close-up photographs, from a distance of what cannot have been more than a few inches, which were hoped to give, in Mr ORAK's own words a *"clear picture to see the element"* of something that he needed to fathom out. The Tribunal accordingly does not understand on what basis it could properly be submitted that any other photographs which were taken would be *"even more detailed"*.

33.6. The next issue to be ruled on concerns the existence or importance of any sporting advantage intended, achieved or likely to be achieved by the Respondents through their acts.

33.6.1. In this respect, the FIA contends that:

33.6.1.1. the conduct complained of was capable of bringing it and motorsport into disrepute, regardless of whether or not the Respondents directly or indirectly obtained any advantage, because the reprehensible and unethical element in that conduct was in the covert obtaining of the information irrespective of its intended use;

33.6.1.2. the Respondents could, as a matter of fact, have made indirect use of the information, if only through the close association between *Avitas Motorsport* and *OMSE*; and

33.6.1.3. the fact that the Respondents might have obtained the information, or most of it, from photographs that were in the public domain does not justify what they in fact did.

33.6.2. It was submitted on behalf of the Respondents that:

33.6.2.1. the FIA has failed to establish that they did obtain any sporting advantage from the photographs;

33.6.2.2. as a matter of fact they could not have made use of the information: (a) because it could not have been

exploited in the design of the cars which they produce, and (b) because its use would have been readily apparent to all concerned;

33.6.2.3. the information which would have been illustrated by Mr ORAK's photograph was clearly illustrated in photographs which were freely available in the media and on the internet.

33.6.3. Both parties rely on the *World Motor Sport Council's* decision in the *Ferrari/McLaren case*, from which two essential principles may be drawn that are relevant to this case, namely:

33.6.3.1. on the one hand, that unauthorised possession of confidential information relating to a stakeholder in motorsport, obtained without that stakeholder's consent, constitutes a breach of the International Sporting Code;

33.6.3.2. and, on the other hand, that the question of whether or not such information has been used, and/or any sporting advantage has thereby been obtained, is highly relevant to the question of penalty in terms of proportionality.

33.7. Concerning the motive with which the contentious photographs were taken, the FIA observes that, if pictures identical to those taken by Mr ORAK were freely available in the public domain, he would not have needed to take them. The Tribunal holds on the contrary that Mr ORAK saw something which, as an expert engineer working in this precise field, he thought was novel and which he did not understand but wanted to.

33.7.1. As to the photographs now relied on the Tribunal considers that they do not establish that *Marklund* had done anything, either by way of displaying their cars or publishing photographs of them which put into the public domain detailed information about their suspension.

33.7.2. For the Tribunal to have found otherwise would have required a finding that, in the absence of any reliable or compelling evidence, *Marklund* had been wholly disingenuous in the entirety of their complaint about the taking of the photographs in this case, and in making the complaint that they did to the stewards about "spying" they were in fact pretending to be concerned about

something that they themselves had already put into the public domain. The Tribunal firmly declines to accept that invitation. On the contrary, it is sure, on the basis of his own admission, that Mr ORAK saw something which as an expert engineer working in this precise field he thought was novel and which he did not understand but wanted to.

33.8. In addition, the Parties set out arguments relating to Mr AVDAGIC's email dated 15 July 2015. This communication is relied on by both parties:

33.8.1. For the FIA, this email constitutes an incontestable admission by Mr AVDAGIC that, notwithstanding his denial of being personally involved, he was nonetheless conscious of the fact that the conduct complained of was *"of course not acceptable"* and could not be tolerated by his company and merited suspension;

33.8.2. Whereas the Respondents assert, which the Tribunal accepts, the firm denial that this email is consistent with that part of the factual allegations in the Notifications of Charges which implicitly contends that Mr AVDAGIC had been "keeping watch".

33.8.3. Without regarding this email as an admission by Mr AVDAGIC that he had been *"keeping watch"* while Mr ORAK took the contentious photographs, the Tribunal believes, from the adversarial debate on this point, from watching the videos relating thereto and from listening to the comments they provoked from both Parties, that the FIA is justified in its allegation that Mr AVDAGIC had indeed been observing the *Marklund* pit area while his nephew was inside it.

33.9. The Tribunal noted with some surprise the way in which Mr AVDAGIC's defence to the allegation that he had "*kept watch*" was advanced in Closing Argument which complained that FIA had made "*completely unfounded allegation that [the Respondents] were engaged in a carefully orchestrated conspiracy to steal technology from Marklund*," whereas the case which had in fact been advanced was that Mr AVDAGIC had kept watch and was accordingly jointly responsible "*whether as instigator or as accomplice*". It was, however, never submitted to the Tribunal that there had been any kind of "*carefully orchestrated conspiracy*". On the contrary, it was expressly accepted on behalf of FIA that it would not have been open to the Tribunal to find even the case which was in fact advanced until it had "seen the Respondents testify and be cross examined." Having done so, the Tribunal is sure that it was not being told the whole truth, and

the sanction that it thinks just and proportionate to impose accordingly reflects:

33.9.1. what it considers to have been an opportunistic attempt to discover details of *Marklund's* suspension, of which the anti-roll bar is of course an important component;

33.9.2. a failure voluntarily and immediately to delete the offending photographs;

33.9.3. untruthful accounts by both Respondents as to what they had done;

33.9.4. the fact that the Tribunal is not satisfied that any sporting advantage was in fact derived or that the photographs were copied or sent to any other party;

33.9.5. and, in coming to that conclusion [33.9.4.], the Tribunal takes into account the fact that forensic examination of the phone, had it been called for, might have proved what the Tribunal, in the absence of such proof, thinks right and fair to assume.

SANCTIONS AND COSTS

34. Article 3.2-(ii) JDR provides that the Tribunal may impose on the Respondents various penalties, including fines (Article 3.2-(ii)-a) and bans on taking part or exercising a role, directly or indirectly, in competitions, events or championships organised directly or indirectly on behalf of or by the FIA, or subject to the regulations and decisions of the FIA (Article 3.2-(ii)-b).

35. Being mindful of the fact that the ongoing suspension of Mr ORAK's accreditation has been in place since 12 June 2015, and that Mr AVDAGIC's accreditation was similarly suspended from 12 June until 1 September 2015, the Tribunal decides that the appropriate period of suspension in both cases must be at least one of 6 months; that credit must be given for the periods of suspension from the Rallycross Championship which have already been served; that Mr AVDAGIC must pay a fine; and that, pursuant to Article 8.2 JDR, the costs of the procedure are to be borne by the Respondents jointly and severally.

ON THESE GROUNDS,

THE FIA INTERNATIONAL TRIBUNAL JUDGES AND RULES THAT:

1. **Mr Kerem ORAK be suspended, for a period expiring on 22 December 2015, from taking part or exercising any role, directly or indirectly, in competitions, events or championships organised directly or indirectly on behalf of or by the FIA, or subject to the regulations and decisions of the FIA;**

2. **Mr Halid AVDAGIC be suspended, for a period expiring on 31 March 2016, from taking part or exercising any role, directly or indirectly, in competitions, events or championships organised directly or indirectly on behalf of or by the FIA, or subject to the regulations and decisions of the FIA;**

3. **Mr Halid AVDAGIC is ordered to pay a fine of Euro 25,000;**

4. **Mr Halid AVDAGIC and Mr Kerem ORAK shall be jointly and severally liable to pay costs of the procedure in the assessed sum of Euros 25,000, as provided for by Article 8.2 JDR.**

Paris, 28 January 2016

The President

Edwin Glasgow QC