

INTERNATIONAL COURT OF APPEAL (ICA)
OF THE
FEDERATION INTERNATIONALE DE L'AUTOMOBILE (FIA)

CASE:

Appeal lodged by

**the Automobile Club d'Italia (ACI)/
Commissione Sportiva Automobilistica Italiana (CSAI)
on behalf of its licence holder, OSELLA SARL
against
the decision taken by the Stewards of the Meeting at the
"27th Subida Internacional Al Fito" event
on 4 October 1998 in Spain
counting towards the
European Hill Climb Championship**

Hearing of Monday, 15th February 1999 in Paris

Translation - Original in French

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr. Vassilis KOUSSIS (Greece), elected President, Mr. Charles WHITBY, Queen's Councillor (Great Britain), Mr. J.W.G. van ROSMALEN (Netherlands), and Dr. José MACEDO e CUNHA (Portugal);

Sitting in Paris on Monday, 15 February 1999, at the Headquarters of the Fédération Internationale de l'Automobile, 8, place de la Concorde, 75008, PARIS;

Ruling on the appeal lodged by the Automobile Club d'Italia (ACI) / Commissione Sportiva Automobilistica Italiana (CSAI) on behalf of its licence holder OSELLA against the decision handed down by the Stewards of the Meeting of the 27th Subida Internacional Al Fito run in Spain on 4th October 1998 as part of the European Hill-Climb Championship;

After hearing for the appellant the competitor Enzo OSELLA and the driver Pasquale IRLANDO assisted by Mr. Roberto CAUSO, Lawyer with the Rome Bar Association, and for the respondent, in the absence of the competitor STRAUBING, the driver Rüdiger FAUSTMANN, assisted by Mr. Peter KIESGEN, Lawyer;

Having recognized that the procedure was in order, that the rights of the parties had been properly examined both prior to the hearing and during the hearing itself, that there had been due hearing of the parties who had supplied detailed explanations and answers when requested during the hearing with the aid of simultaneous interpretation which was deemed acceptable by the parties involved,

WHEREAS following competitor STRAUBING's protest, the Stewards of the Meeting of the event, in the decision mentioned above, decided to exclude competitor OSELLA's car N°8 driven by Pasquale IRLANDO because of an infringement of Article 259, §14.4.1 and 259, §3.7.10 of Appendix J of the International Sporting Code;

WHEREAS competitor OSELLA immediately announced his intention, in compliance with the International Sporting Code's imposed deadline, to appeal the decision taken and deposited the required fee in this respect;

WHEREAS the intent to appeal was drafted in very unambiguous terms and announced the intention to appeal before the Spanish National Court of Appeal;

WHEREAS the expression of this intention to appeal should have been followed, within 48 hours, by an appeal in due form before the National Court of Appeal, in accordance with Article 182 of the International Sporting Code, which states that *"Every notice of appeal*

shall be in writing and signed by the appellant or by their authorised agent.", and that this must be accompanied by a specified fee;

WHEREAS Article 185 of the International Sporting Code also stipulates that: *"The right to bring an appeal to an ASN expires two days after the date of the notification of the decision of the Stewards of the event, on condition that the intention of appealing has been notified in writing to the Stewards of the event within one hour of the decision";*

WHEREAS clearly the provisions of the International Sporting Code show that an appeal, which is distinct from the intention to appeal, has to be lodged and presented in writing and signed by the competitor or his representative;

WHEREAS in this case the appellant did not justify the appeal to the National Court of Appeal, in contradiction with the intention which had been duly notified, within one hour following the decision;

WHEREAS no appeal was lodged with the decision of the Spanish National Court of Appeal;

WHEREAS the appellant explained he intended to lodge an appeal directly with the International Court of Appeal (ICA) on the basis of Article 183, §2, which for the International Court of Appeal (ICA) states that *"Appeals from decisions of the stewards of the meeting where the parties concerned have jointly decided to submit the appeal not to the National Court of Appeal of the country of the event but directly to the International Court of Appeal with the assistance and agreement of their respective ASNs" ;*

WHEREAS it was only on 22 December 1998 that the agreement of both ASNs was obtained, although

- the Spanish National Court of Appeal had not been appealed to
- the International Court of Appeal had not been appealed to, but should have been within the 7 day time limit after notification of the decision, in accordance with Article 185b of the International Sporting Code;

WHEREAS the appellant claims he had initiated talks to obtain the agreement from both the ASNs, and that these discussions and a letter were likely to postpone the appeal deadline until a joint decision of both ASNs could be reached, feeling there was a weakness in the International Sporting Code concerning the referral to either of the two Courts of Appeal;

WHEREAS this line of reasoning cannot be entertained because of the clearly worded provisions of the International Sporting Code;

WHEREAS in this case on the verge of having this joint agreement, the competitor, through the CSAI, referred his case to the International Court of Appeal in a letter dated 19 October 1998 which arrived on 21 October 1998 as well as in a fax sent on 21 October 1998, with the required appeal fee which was justified by a transfer to the Banque du Crédit Coopératif dated 20 October 1998;

WHEREAS finally, the fact of not referring to the National Court of Appeal within the 48-hour time limit did not exclude the possibility of referring to the International Court of Appeal within 7 days of notification of the decision while in addition requesting the joint agreement of both ASNs;

WHEREAS the competitor would have been safe in any case because, even if he had not obtained agreement of both ASNs, he could still have brought his case before the Spanish National Court of Appeal;

WHEREAS behaving the way he did, competitor OSELLA did not protect his rights before either the National Court of Appeal or the International Court of Appeal, the latter which has no alternative but to state that in this case the appeal lodged before it is obviously inadmissible;

ON THESE GROUNDS,

DECLARES AND JUDGES as inadmissible the appeal lodged by the ACI/CSAI on behalf of the competitor OSELLA,

DECLARES that it behoves the FIA to take into consideration the International Court of Appeal's present decision in establishing the classification,

ORDERS the appellant to pay all costs of the appeal.

Paris, 15th February 1999

(signature)

The President