

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

CASE:

Appeal lodged by

**the ACI (Automobile Club d'Italia)/
CSAI (Commissione Sportiva Automobilistica Italiana)
on behalf of its licence holders CRG SRL on the one hand,
and Nicola GIANNIBERTI on the other hand,**

against

**the Decision of the Federal Council of the Federazione Auto Motoristica Sammarinese
(FAMS)**

taken on 14 October 1998

**(Event: San Marino Trophy
12-14 June 1998)**

Hearing of Monday, 18 January 1999 in Paris

Translation - Original in French

The FIA INTERNATIONAL COURT OF APPEAL, comprising Mr. J.W.G. van ROSMALEN (Netherlands) elected President, Dr. Edgar JULIEN (France), Mr. Vassilis KOUSSIS (Greece), and Dr. Antonio VASCONCELOS TAVARES (Portugal);

Sitting in Paris on Monday, 18 January 1999, at the Headquarters of the Fédération Internationale de l'Automobile, 8, place de la Concorde, 75008, PARIS,

Ruling on the appeal lodged on behalf of the licence holders CRG SRL on the one hand, and Nicola GIANNIBERTI on the other hand, against the decision handed down by the Federal Council of the Federazione Auto Motoristica Sammarinese (FAMS) taken on 14 October 1998 (San Marino Trophy - 12-14 June 1998);

After hearing, for the appellants, the CSAI represented by Mr. Roberto CAUSO, Lawyer with the Rome Bar, Mr. Dino CHIESA, CRG Sports Manager, Mr. Nicola GIANNIBERTI in person, these two competitors assisted by Mr. Massimo COCCIA and Mr. Gabriele BARTOLUCCI, Lawyers, and expert witnesses in the persons of Mr. Guy COLLIN, FMK Circuit Inspector, and Mr. MUSCIONI, for the organizer of the San Marino Trophy, and noting in addition the absence of the competitors SWISS HUTLESS INTERNATIONAL and BIESSE KART, duly invited to appear;

After recognizing that the proceedings were in order, that the rights of the parties had been properly examined both prior to the hearing and during the hearing itself, the Appellants and expert witnesses having been cross-examined and having supplied all detailed and relevant explanations and answers when requested during the hearing with the aid of simultaneous interpretation which was deemed acceptable by the parties involved,

After recognizing that the appeals were admissible and that they had to be ruled on;

1) On the decision taken the 14 October 1998 by the Federal Council of the FAMS

WHEREAS this decision had confirmed the decisions taken by the Stewards of the Meeting, but whereas it was necessary to ascertain under what conditions they were confirmed, in contradiction with the International Sporting Code;

WHEREAS concerning the competitors' appeal lodged against the decisions of the Stewards of the Meeting, Article 180 of the International Sporting Code states that the competent jurisdiction must inevitably be a National Court of Appeal as defined in Article 187 of the International Sporting Code, wherein it is specified that each National Sporting Authority

(ASN) shall nominate, to constitute the National Court of Appeal, *"a certain number of persons who may or may not be members of the ASN concerned, who will constitute the National Court of Appeal,"* and that *"No members of this Court of Appeal may sit on a case if they have been involved in any way as competitors, drivers or officials in the competition under consideration, or if they have participated in any earlier decision concerning or have been involved, directly or indirectly, in the matter under consideration."*

WHEREAS it is evident that the event was organized under the aegis of the FAMS, of which the Federal Council, its managerial body which carries out tasks and administrates but has absolutely no juridical functions;

WHEREAS the decision of 14 October 1998 began with the words, *"the Federal Council of the FAMS, meeting in San Marino on 12 October 1998"* and was written on official FAMS stationery, while this organization claims that it rules on appeals presented by the competitors, even though appeals may only be presented to National Courts of Appeal;

WHEREAS moreover, the documents and the proceedings showed that the competitors were not summoned to be heard by the Federal Council, and that in fact there was no hearing, in violation of Article 186 of the International Sporting Code, which specifies that *"All parties concerned shall be given adequate notice of the hearing of any appeal."* ;

WHEREAS the proceedings also revealed that, in addition, the competitors did not have the chance to call any witnesses, in violation of the same Article, which states that concerning the competitors, *"They shall be entitled to call witnesses,"* ;

WHEREAS the decision never mentions the names of the judges, and is signed only by the Secretary-General of the executive body, the FAMS, in the person of Mr. Augusto BARDUCCI, Member of the FAMS Committee;

WHEREAS, finally, the decision taken by the FAMS stipulates that the competitors protest *"cannot be appealed before the National Court of Appeal of the ASN or before the International Court of Appeal (ICA)"* which constitutes a clear abuse of its functions, because a jurisdiction cannot deprive parties of the right to appeal against its own decision;

WHEREAS, for all these reasons, the FAMS's decision dated 14 October 1998 is absolutely invalid, and consequently, the International Court of Appeal (ICA) must rule on the affairs in question;

2) On the decisions taken by the Stewards of the Meeting

3)

WHEREAS, in the light of this, the International Court of Appeal (ICA) can also but only note the invalidity of the decisions taken by the Stewards of the Meeting, where it was not stated that the competitors were present or that the Race Director was heard, in violation of Articles 175 and 174-e of the International Sporting Code, which state:

- Article 175: *"The hearing of the protester and of all parties concerned by the protest shall take place as soon as possible after the protest has been lodged. The concerned parties shall be summoned to appear at the hearing, and may be accompanied by witnesses....."* ;

- Article 174-e: *"The Stewards of the Meeting shall treat all protests referred to above as urgent and the Race Director shall be heard."* ;

WHEREAS from the proceedings it was noted that the competitors had requested that witnesses be heard, that this had been refused, just as the Race Director had not been heard;

WHEREAS under these circumstances, the International Court of Appeal (ICA) was confronted with a decision which did not respect the principle of due hearing of the parties as set out in Articles 175 and 174-e, and that it must therefore note the nullity of such a sentence;

WHEREAS consequently the International Court of Appeal (ICA) must rule on the whole case and address the basic questions regarding those who appealed in due form against the decisions of the Stewards of the Meeting, in this instance the competitors GIANNIBERTI, CRG, SWISS HUTLESS INTERNATIONAL, and BIESSE KART;

WHEREAS the competitor GIANNIBERTI essentially maintains:

- 1) that the circuit was narrower than the minimum width authorized by Article 44 (under Chapter D - Circuits) of the FMK's International Karting Regulations, which stipulates that the width must be at least 8 meters;
- 2) that the guard rails for the drivers' safety did not conform to Article 46 of the Regulations which states, imperatively, in bold-faced type, that the use of tyres along the track edge is forbidden;

WHEREAS consequently, the competitor GIANNIBERTI maintained that the circuit did not comply with the Regulations, and demanded the annulment of the Grand Prix of San Marino, and withdrawal of the points of those competitors who participated in the event, along with the return of the guarantees and deposits;

WHEREAS the competitor CRG essentially maintained:

- 1) that the presence of tyres along the edge of the same circuit constituted a dangerous risk as well as an infraction of Article 46 of the Regulations;
- 2) that the lengths of the straights, which exceeded the maximum limit of 170 meters as set out in Article 44 of the FMK's International Karting Regulations were not authorized, and were dangerous;

WHEREAS he maintained consequently that it was a circuit which was poorly adapted to the needs of a Karting event, and thus put forward the same protests as the competitor GIANNIBERTI;

WHEREAS the decision taken by the FAMS and the decisions of the Stewards of the Meeting were annulled, it was up to the International Court of Appeal (ICA) to rule on the protests put forward as a result of the appeal by the competitors GIANNIBERTI, CRG, SWISS HUTLESS, and BIESSE KART;

WHEREAS SWISS HUTLESS INTERNATIONAL maintained that the lengths of the straights exceeded 170 meters, and BIESSE KART maintained that the deceleration lane was void of any chicanes, contrary to Article 45-a-2 of the FMK's International Karting Regulations;

WHEREAS concerning this protest, the hearing made it possible to establish that no chicanes were present in the deceleration lane, while on the other hand, there was one on the circuit itself which blocked the view of the competitors who were re-entering the track at the exit of the repair area, as well as the view of the competitors who were continuing to race in the event;

WHEREAS photographs showed that there was an additional danger in that the place where the view of the competitors was blocked was dangerous because it was also the place where a signalling flag was brandished by a Steward of the Meeting;

WHEREAS from the hearing and the documents it was established that several of the infractions as alleged by the appellants did in fact exist;

WHEREAS the reply contained in the decision taken by the Stewards of the Meeting was that the non-respect of the rules was of little importance once the circuit had been homologated by a qualified circuit inspector;

WHEREAS the International Court of Appeal cannot rule on the homologation as it is not a problem raised in the appeal lodged by the different competitors; however, on a fundamental level, the International Court of Appeal must decide if the circuit was or was not in conformity with the Regulations regardless of whether or not the circuit had been homologated - which was a different administrative problem than the one brought before the Court;

WHEREAS in addition it was not uninteresting to note that the homologation did not take place under conditions which appear to be in conformity with the regulations in force;

WHEREAS in this case, the circuit was not in conformity, notably for reasons of safety, and the event could not take place without aggravating the risks inherent in the practice of Karting which are already supported by the drivers under normal circumstances;

WHEREAS in fact during the hearing the expert witnesses recognized that prior to the beginning of the practice sessions, regardless of the improvements made to the circuit, the track did not have a minimum width of 8 meters at all places, as specified by the Regulations: the width of the Marlboro curve was only 5.70 meters and the straight, which exceeded 170 meters, was 190 meters long;

WHEREAS the circuit was therefore not in conformity, and a dispensation was granted on the Friday morning, immediately prior to the practice, under conditions which did not correspond to headings 10, 10-1 and 11 of Chapter D - Circuits;

WHEREAS the event run under these circumstances, on a circuit which was not in conformity with the regulations, cannot be the object of any other sanction but the annulment of the event itself;

ON THESE GROUNDS,

The International Court of Appeal ANNULS the FAMS's decision of 14 October 1998;

ANNULS the decision of the Stewards of the Meeting of 12 June 1998 at 4:50 p.m. concerning GIANNIBERTI, of 12 June 1998 at 7:20 p.m. concerning SWISS HUTLESS INTERNATIONAL, of 12 June 1998 at 7:35 p.m. concerning CRG, and of 13 June 1998 at 12:50 p.m. concerning BIESSE KART;

EXAMINES consequently the entire case and RE-RULES;

NOTES that the circuit, in the state in which the competitors were supposed to use it, was not in conformity with regard to the different points referred to above, and presented as a result important risks which negatively affect the safety of Karting competitions;

ANNULS the event known as the San Marino Trophy, with all the consequences this brings for the FMK, notably with regard to the classification of the European Karting Championship;

SENTENCES the FAMS to reimburse the guarantees or deposits received from the various competitors, relative both to their protest and to their appeals before the FAMS and before the International Court of Appeal;

RULES that the FAMS must pay all costs of the appeal.

Paris, 18 January 1999

(signature)

The PRESIDENT