



INTERNATIONAL COURT OF APPEAL (ICA)

of the

FEDERATION INTERNATIONALE DE L'AUTOMOBILE

appeals brought by Alfa Romeo Racing

against

**Decisions Nos. 56 and 57 dated 28 July 2019, taken by the Stewards of the 2019
German Grand Prix held in Hockenheim, Germany, counting towards the 2019
FIA Formula One World Championship**

Cases ICA-2019-06 and ICA-2019-07

Hearing of Tuesday, 24 September 2019 in Paris

Decision of 3 October 2019



The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), composed of Mr Philippe Roberti de Winghe (Belgium), who was designated President of the Hearing, Mr Harry Duijm (Netherlands), Mr Ulrich Haas (Germany), Mr David Miles (Australia) and Mr Erich Sedelmayer (Austria), met in Paris on Tuesday 24 September 2019 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

Ruling on the appeals brought by Alfa Romeo Racing (“ARR” or “the Appellant”) against Decisions Nos. 56 and 57 dated 28 July 2019, taken by the Stewards of the 2019 German Grand Prix held in Hockenheim, Germany (“the Race”), counting towards the 2019 FIA Formula One World Championship, under which the Stewards decided to impose a 10-second stop-and-go penalty, converted into a 30-second time penalty, on each of the ARR cars Nos. 7 (Kimi Räikkönen) and 99 (Antonio Giovinazzi) for a breach of Article 27.1 of the 2019 FIA Formula One Sporting Regulations (the “2019 F1 SR”).

The following persons attended the hearing:

on behalf of Alfa Romeo Racing:

Mr Frédéric Vasseur (CEO and Team Principal)
Mr Alessandro Alunni Bravi (Director and General Counsel)
Mr Beat Zehnder (Team Manager)
Mr Sören Ebbesen (Systems Engineer)
Mr Massimo Coccia (Attorney at law)
Mr Gabriele Bartolucci (Attorney at law)
Mr Francisco A. Larios (Attorney at law)
Mr Mario Vigna (Attorney at law)
Mr Jan Monchaux (Technical Director and Witness)
Mr Luca Furbatto (Chief Designer and Witness)
Mr Davide Spagnol (Head of Systems Engineering and Witness)

on behalf of the FIA:

Mr Pierre Ketterer (Head of Department – Governance, Integrity and Regulatory Affairs)
Mr Nikolas Tombazis (Head of Single Seater Technical Matters)
Ms Delphine Lavanchy (Legal Counsel)
Mr Max Duthie (External Legal Counsel)
Ms Lauren Pagé (External Legal Counsel)
Mr Olivier Hulot (Head of Formula 1 Electronics and Witness)



on behalf of Rich Energy Haas F1 Team (Interested third party):

Mr Jeremy Courtenay Stamp (Solicitor)

Ms Amanda Pattison (Assistant)

on behalf of SportPesa Racing Point F1 Team (Interested third party):

Ms Leslie Ross (General Counsel)

Mr Daniel Priestman (Senior Control Systems Engineer)

Mr Paul Harris QC (Barrister)

Ms Fiona Banks (Barrister)

on behalf of Motorsport UK (ASN of SportPesa Racing Point F1 Team):

Mr Jamie Champkin (Regulatory Counsel and Disciplinary Officer)

on behalf of Renault F1 Team (Observer):

Ms Marie Jourdain (General Counsel)

on behalf of Red Bull Racing Team (Observer):

Mr Michael Manning (Trackside Control Engineer)

on behalf of Mercedes-AMG Petronas Motorsport (Observer):

Ms Shaila-Ann Rao (General Counsel)

Ms Carrie Donaghy (Head of Commercial Legal)

Mr Evan Short (Team Leader Trackside Electronic Systems)

Also present at 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 Appellant, the FIA and the interested third parties filed written submissions and, at the hearing on 24 September 2019, presented oral arguments and addressed questions asked by the Court. The hearing took place in accordance with the adversarial principle, with the aid of simultaneous translation. None of the Parties raised any objection, in relation either to the composition of the Court or to the manner in which the proceedings were conducted, notably the simultaneous translation.



REMINDER OF THE FACTS

1. At the race on 28 July 2019, due to the wet weather conditions, the FIA F1 Race Director, Mr Michael Masi, announced 10 minutes before the Race that it would commence behind the safety car. After having called for three additional formation laps, the Race Director then called for a “standing start”.
2. At the start of the Race, the Appellant’s Cars Nos. 7 and 99 were lined up on the left side of the grid, in positions 5 and 11 respectively.
3. In the first second after the start, the FIA race start data revealed that Mr Räikkönen, who was driving ARR’s Car No. 7, travelled the furthest in that second and Mr Giovinazzi, who was driving ARR’s Car No. 99, moved up to sixth.
4. After the Race, the FIA Formula One Technical Delegate, Mr Jo Bauer, reported the following regarding the start data of the ARR cars:

“the race start data of car numbers 07 and 99 were checked.

These were found not being in compliance with Article 27.1 of the 2019 Formula One Sporting Regulations and Article 9 of the 2019 Formula One Technical Regulations.

I am referring this matter to the stewards for their consideration”

5. As a consequence, the Stewards decided to impose a 10-second stop-and-go penalty on the ARR cars Nos. 7 (Kimi Räikkönen) and 99 (Antonio Giovinazzi) for a breach of Article 27.1 of the 2019 F1 SR. As this penalty was imposed after the Race, the Stewards converted it into a 30-second time penalty for each car in accordance with Article 39.3 of the 2019 F1 SR.
6. The Stewards’ Decisions reads as follows:

“Article 27.1 of the Formula One Sporting Regulations specifies that “The Driver must drive the car alone and unaided.” In order to guide the teams as to how they can conform to this regulation, the FIA’s Formula One department has published to the teams a document specifying how each of the various systems that could aid a driver would be regulated. The Stewards considered that this document has some effect as a Technical Directive as affirmed by the International Court of Appeal.

The clutch is controlled electronically via the Common ECU. However, the teams have the option to tune some of the controlling parameters. In order to prevent the teams from using this tuning to affect the way in which the clutch engages at the start of the race in a way that could potentially mimic

traction control or other advantageous schemes, the FIA requires that the torque in the clutch matches (within specified limits) the torque demand as the driver releases the clutch. This must occur within 70 milliseconds.

In the case of both cars of Alfa Romeo Racing, the time that it took for the torque to align with the torque demand was close to 200 milliseconds and 300 milliseconds respectively. This provided a more gradual application of the torque, which given the wet conditions was a potential advantage. Regardless of whether there was an actual advantage, the Stewards determined that this was a clear breach of the guidance given to the teams as to how this would be adjudicated.

The Stewards held a hearing and reviewed the data, with three members of the team present, including the engineers concerned, along with the FIA Technical Delegate and his assistants responsible for these checks. The team accepted that they were not within the required limits. The Stewards accepted the team's explanation that the cause of this was that they were caught out by the unusual weather conditions and the fact that they did not do any practice starts under these climatic conditions and set the parameters in a way that failed to meet the requirements. However, the Stewards noted that the FIA Technical Delegates check this parameter on all cars, and that no other irregularities were found. The obligation to meet the requirements is irrespective of the climatic conditions. Therefore, the Stewards considered that a Breach of Article 27.1 occurred.

The Stewards order a ten-second stop-and-go time penalty, which as this was applied after the race will be converted to a 30 second time penalty in accordance with Article 38.3 d. In reaching this decision, the Stewards noted that this was a breach of the Sporting Regulations and as a guide compared this to a False Start with a potential advantage which carries a normal penalty of a ten second stop-and-go under the Sporting Regulations (Ref. Art. 36.13)."

7. The Stewards noted at the conclusion of their Decisions that "*Competitors (...) have the right to appeal certain decisions of the Stewards, in accordance with Article 15 of the FIA International Sporting Code and Article 9.1.1 of the FIA Judicial and Disciplinary Rules, within the applicable time limits.*"
8. Within the hour following the publication of the Decisions, ARR notified the Stewards of its intention to appeal against the Decisions, and on 31 July 2019 (i.e. within 96 hours of the notification of their intention to appeal), ARR confirmed its appeals before the Court.



PROCEDURE AND FORMS OF DECISIONS REQUESTED BY THE PARTIES

9. At the commencement of the proceedings it was decided that, given the close connection between these two cases (appeals lodged by the same Competitor for the very same reasons in the very same context), they would be consolidated and considered jointly during the same hearing.
10. Prior to the hearing, the President of the Hearing issued a preliminary Decision concerning the calendar of the procedure (Decision No. 1 of the President of the Hearing, dated 5 August 2019).
11. The requests of Rich Energy Haas F1 Team (“Haas”) and SportPesa Racing Point F1 Team (“Racing Point”) to be admitted as third parties were accepted by the President of the Court in his Decisions Nos. 2, dated 8 August 2019 (Haas), and 3, dated 9 August 2019 (Racing Point).
12. On 20 August 2019, the President of the Court rejected in his Decision No. 4 a request of the third party Racing Point to immediately declare the appeals inadmissible.
13. On 23 August 2019, ARR requested the ICA to order the FIA to produce the race start data, duly anonymised, for all teams from 2017 until the present day. This request was rejected by the President of the Court in his Decision No. 5, dated 27 August 2019.
14. On 30 August 2019, the President of the Court granted, in his Decision No. 6, an extension of the Appellant’s deadline to file the French version of its Grounds for appeal.
15. On the same day, the President of the Court rejected in his Decision No. 7 the request of the Appellant to obtain a French translation of some FIA documents.
16. Renault F1 Team (“Renault”), Red Bull Racing Team (“Red Bull”) and Mercedes-AMG Petronas Motorsport (“Mercedes”) were admitted as observers.
17. In its Grounds for Appeal, filed on 2 September 2019, the Appellant made the following requests for relief from the Court:

“(A) Preliminarily, as a procedural motion:

- (i) To order FIA to produce the clutch torque control delay data for all teams and all race starts from 2017 until present day, anonymized for confidentiality purposes;*



- (ii) *Alternatively, to order FIA to produce the clutch torque control delay data for all teams and all race starts of 2017 and 2018 and Hockenheim 2019, anonymized for confidentiality purposes.*

(B) As substantive motions:

- (iii) *To hold that the appeals filed by Alfa Romeo Racing before the FIA International Court of Appeal against Decisions no. 56 and 57 of the Stewards issued on 28 July 2019 are admissible and well-founded.*
- (iv) *To set aside Decisions no. 56 and 57 of the Stewards issued on 28 July 2019.*
- (v) *To issue a new decision declaring that Alfa Romeo Racing did not breach Article 27.1 of the FIA Formula One Sporting Regulations with the start of the drivers Kimi Räikkönen (car no. 7) and Antonio Giovinazzi (car no. 99) and, accordingly, dismiss the sanctions against Alfa Romeo Racing and the drivers.*

(C) Eventualiter:

- (vi) *In the alternative, to declare that the sanctions imposed by Decisions no. 56 and 57 of the Stewards issued on 28 July 2019 are disproportionate to the offenses (allegedly) committed and reduce the sanctions accordingly to a reprimand.*
- (vii) *In the alternative, to acquit driver Kimi Räikkönen (car no. 7) and only sanction Driver Antonio Giovinazzi (car no. 99).*

(D) In any case:

- (viii) *To order FIA and the third parties to bear all costs of these proceedings.”*

18. The FIA, in its Grounds in Response received by the Court on 17 September 2019, asked the Court to:

“6.1.1. Declare the appeals inadmissible, further to Article 12.2.4 of the 2019 International Sporting Code and Articles 17.2 and 38.3 of the 2019 FIA Formula One Sporting Regulations; or

6.1.2 in the alternative, dismiss the appeals in their entirety, further to Article 10.9 of the FIA Judicial and Disciplinary Rules; and

6.1.3 in any event, order ARR to pay the ICA costs referenced in Article 11.2 of the FIA Judicial and Disciplinary Rules.”



19. Motorsport UK, as the third-party Racing Point's parent FIA member, in its Written Observations received by the Court on 17 September 2019, asked the Court to reject the appeals.
20. The interested third party Haas, in its Written Observations received by the Court on 13 September 2019, asked the Court to confirm that the Decisions are not subject to appeal. Should the Court decide the contrary, then Haas asks it to impose a penalty of disqualification on the Appellant's cars.
21. The interested third party Racing Point, in its Written Observations received by the Court on 17 September 2019, asked the Court to determine that there is no jurisdiction to entertain these appeals and, even if there were, that the appeals are misconceived and should be dismissed.

ADMISSIBILITY

a) Submissions of the parties

22. The Appellant puts forward the following grounds on the issue of the admissibility of its appeals:
 1. According to the ICA Case Pekaracing 24/2009, appeals may not be lodged against decisions imposing a 30-second time penalty as long as such decisions are legally valid, namely grounded on a sufficient legal basis. If this is not the case, then an appeal must be allowed against such a decision.
 2. In this case, the Decisions of the Stewards refer to a document (Section C.2 of TD/011-17) which deals with the clutch torque control requirements. The Stewards considered that these requirements had not been met by the Appellant. The Appellant contends that these requirements are not binding and are of a purely advisory nature.
 3. The Appellant claims that this has been confirmed by the FIA, as, before this case, the latter had never sanctioned the ARR cars and drivers, or those of other competitors, for a "breach" of the requirements (Section C.2 of TD/011-17), although the ARR cars and drivers had never been in conformity with the clutch torque parameters.
 4. The Appellant puts forward that its cars systematically exceeded the limit indicated in that Section, sometimes by far. The Appellant adds that the FIA will include only in 2020 the provision of Section C.2 of TD/011-17 in the Formula One Technical Regulations. This proves that the FIA never considered this provision to be binding.
 5. The Appellant admits that it has to accept the risk that if it does not abide by a Technical Directive, this may lead the Stewards not being satisfied

by the evidence it may bring as to the reason for non-compliance. However, based on the FIA's past practice with respect to the application of Section C.2 of TD/011-17, the Appellant argues that this general rule should not be applied to it in the present case.

6. The Appellant argues further that "no violation of Article 27.1 of the 2019 F1 SR occurred" since the alleged breach of clutch torque parameters did not "aid" its drivers.
7. The Appellant claims that an 'incident' did not occur as defined in Article 38.1 of the 2019 F1 SR and even if there was an incident the drivers were not predominantly to blame.

23. With respect to the issue of the admissibility of the appeals, the FIA contends that:

1. Article 12.2.4 of the 2019 FIA International Sporting Code (ISC) and Articles 17.2 and 38.3 of the 2019 F1 SR provide that there is no right of appeal against a decision to impose a 10-second stop-and-go penalty, for the reason that such a decision is a "field of play" decision where strong sporting reasons justify that it should not be subject to appeal.
2. The ICA Case Pekaracing 24/2009 quoted by the Appellant is not binding on the ICA. In any event, Article 12.2.4 ISC, which had been referred to in that decision of the ICA, was amended in 2018 in order to confirm that no aspect of a decision to impose a stop-and-go penalty can be appealed.
3. In the alternative, the FIA claims that if the Court considers that it has a supervisory authority despite the new wording of Article 12.2.4 ISC, there remains a proper regulatory basis in the applicable rules for the penalty imposed by the Stewards. As stated in the ICA's decision of 2009 quoted by the Appellant, the ICA has always been clear that it has no jurisdiction to review this type of decision if there is a regulatory basis for it.
4. The Appellant's argument that the FIA is barred from enforcing the clutch torque parameters because it had led the Appellant to believe they would not be enforced (doctrine of estoppel/legitimate expectation) must be rejected, as the FIA has proved to be flexible in cases of minor non-compliance but has never said that it would not enforce those parameters in the case of a major non-compliance.
5. The fact that the Appellant knew that it had to comply with those parameters is proven by the Appellant's attempts to endeavour to do so.
6. When teams were marginally over the limits, the FIA had worked with them to assist with compliance, however the Appellant did not make

sufficient efforts to comply and exceeded the limit by a much greater margin than any other team.

7. The Appellant's argument on the drivers' responsibility is without merit, as they are responsible with the other members of the team for making their cars compliant with the regulations.

24. The interested third parties Haas and Racing Point both support the FIA's position and share most of its submissions.

1. Haas contends in particular that elements of Technical Directives such as the ones in Section C.2 of TD/011-17 are official clarifications and that the competitors must comply with the Regulations as clarified or interpreted by the Technical Directives, the burden of proof of compliance with the rules being on the competitor.
2. Based on the case ICA-2014-01, Haas claims that the Stewards were perfectly free to rule that the Appellant was in breach of Article 27 of the 2019 F1 SR, which is clarified by Section C.2 of TD/011-17. Either the cars complied with this Article, as interpreted in Section C.2 of TD/011-07, or they did not. Whether or not the breach resulted in an advantage for the Appellant's cars is completely irrelevant.
3. As the Stewards applied a valid regulatory clause as interpreted by a Technical Directive, Haas submits that Article 17.2 of the 2019 F1 SR must apply fully and that no appeal can be lodged against the Decisions.
4. Haas adds that if the Court were to decide that the appeals are admissible, then the penalty to be imposed on the Appellant's cars and drivers should be disqualification "*for failure to comply with a Technical Directive.*"

25. In line with the FIA's and Haas' submissions, Racing Point submits that Articles 17.2 and 38.3 of the 2019 F1 SR together with Article 12.2.4 ISC preclude the lodging of any appeal against decisions that concern a stop-and-go penalty imposed under Article 38.3 (d) of the 2019 F1 SR.

26. The third-party Racing Point's ASN, Motorsport UK, submits that the appeals should be rejected.

b) Conclusions of the Court

27. The Court acknowledges that the Appellant lodged its appeals in conformity with the time limits set under Article 10.3 of the FIA Judicial and Disciplinary Rules ("JDR"), which is undisputed.

28. Having considered the Parties' written and oral submissions as to the admissibility of the appeals, the Court notes the Articles of the ISC and of the 2019 F1 SR, which provide that certain decisions are not appealable before the ICA:

Article 12.2.4 ISC provides that "certain decisions are not subject to appeal. Those include decisions to impose a drive-through penalty, a stop-and-go penalty, or other penalties as specified in the applicable sporting regulations as not being susceptible to appeal."

Article 17.2 of the 2019 F1 SR provides that "appeals may not be made against decision concerning the following:

a) Penalties imposed under articles 38.3a), b), c), d) (...), including those imposed during the last three laps or after the end of a race. (...)"

Article 38.3 of the 2019 F1 SR provides that "the Stewards may impose any one of the penalties below on any driver involved in an Incident:

(...) d) A ten second stop-and-go time penalty. (...)

[If penalties] are imposed (...) after the end of a race, (...) five seconds will be added to the elapsed race time of the driver concerned in the case of (a) above and 30 seconds in the case of [38.3] (d). (...)"

29. The Decision of the Stewards to impose on each of the Appellant's cars and the drivers a 10-second stop-and-go penalty were converted into a 30-second time penalty to be added to the cars' elapsed race time by virtue of Article 38.3 par. 4 of the 2019 F1 SR.
30. As these penalties were imposed under Article 38.3 d) of the 2019 F1 SR, the Court decides that the Decisions are not subject to appeal, as expressly provided under Article 17.2 of the 2019 F1 SR in connection with Article 12.2.4 ISC.
31. The Court finds that the Appellant's submissions with respect to the principle of legality in the ICA decision Pekaracing 24/2009, where it was decided "the Court retains its supervisory function of ensuring that the rule of law is respected", must be rejected in this case for the following reasons.
32. Firstly, the Court notes that the ICA has issued other decisions (see *inter alia* ICA decision Seat Sport 21 April 2009, ICA decision Vodafone McLaren Mercedes dated 22 September 2008 and ICA decision Dragon Racing 2016-04) where it determined that appeals are not admissible where specific penalties such as a stop-and-go penalty have been imposed.



33. Secondly, the Court confirms that, in any event, it is not bound by previous ICA decisions.
34. Thirdly and most importantly, the Court is bound by the amendments made by the regulator, namely the 2018 FIA General Assembly, to Article 12.2.4 ISC (Art. 152 ISC at the time of the Pekaracing decision), which came into force on 1 January 2019 and clearly restrains the ICA's jurisdiction on certain decisions imposing specific penalties.
35. Article 12.2.4 ISC previously read as follows: *"Penalties of driving through or stopping in pit lanes, together with certain penalties specified in FIA Championship Regulations where this is expressly stated are not susceptible to appeal."*
36. As already quoted above, Article 12.2.4 ISC now provides that *"certain decisions are not subject to appeal. Those include decisions to impose a drive-through penalty, a stop-and-go penalty, or other penalties as specified in the applicable sporting regulations as not being susceptible to appeal."*
37. The FIA explained in its written submissions that the purpose of this amendment was to clarify that not only the penalty imposed in a decision was not subject to an appeal but also the very decision which imposed that penalty.
38. The Court finds indeed that the amendment to Article 12.2.4 ISC is clear and that the new wording of Article 12.2.4 ISC precludes the lodging of an appeal against the Decisions, therefore excluding any legality check by the ICA.
39. In other words, Articles 12.2.4 ISC and 17.2 of the 2019 F1 SR constitute a clear *lex specialis* limiting the ICA's general competence with regard to disputes as foreseen under Article 9.1 JDR.
40. The Court finds that the Stewards stayed within the mandate accorded to them by Articles 12.2.4 ISC and 17.2 of the 2019 F1 SR which apply to the Decisions at stake. Therefore, the Decisions have a sound legal basis in the applicable provisions with respect to the violation committed (here Article 27.1 of the 2019 F1 SR) and the consequences imposed (Article 38.3 par. 4 of the 2019 F1 SR). Consequently, the Stewards enforced regulations, the supervision of which is entrusted to them.
41. Further to the principle of legality the Appellant claims that the appeals are admissible because it had never been sanctioned in the past for the same breach although it had systematically exceeded the limit indicated in Section C.2 of TD/011-17 to the full knowledge of the FIA. According to the Appellant, this situation should lead to the admissibility of its appeals on the basis of the principle of predictability.



42. This submission does not alter the Court's finding that the Stewards stayed within the limits of their mandate when issuing their Decisions. In addition, such submission appears actually to be directed to the merits of the appeals and not on their admissibility. The Court, therefore, does not to change its decision on the consequences of Article 12.2.4 ISC and rejects the Appellant's contention.
43. The Court has also examined Haas' submission where the latter claims that the "correct" penalty to be imposed on ARR's cars and drivers by the Stewards for the breach mentioned in the Decisions could only be a disqualification and not a time penalty.
44. Without going into the merits of the case or exercising some kind of general "supervisory authority" within the meaning of the Pekaracing decision, the Court noted on this point, that sporting regulations may be violated concurrently with technical regulations. In the case at hand the Stewards based their Decisions clearly and expressly on a breach of sporting regulations only, i.e. Article 27.1 of the 2019 F1 SR, which they determined to have occurred. Contrary to what Haas put forward in its submission, without providing any supporting evidence, the regulations give full discretion to the Stewards as to the penalty to be imposed for this type of breach, namely, in the present case, a 10-second stop-and-go penalty, converted into a 30-second penalty as provided under Article 38.3 par. 4 of the 2019 F1 SR.
45. On the basis of the grounds of the Decisions, the Court is thus satisfied that the latter refer to a sound legal basis and that the Decisions thus fell clearly within the scope of Article 12.2.3 ISC and 17.2 of the 2019 F1 SR.
46. All further submissions of the Appellant regarding the issue of admissibility of the appeals are rejected by the Court.
47. Based on the above, the Court finds that it has no jurisdiction in the present case and declares the appeals not admissible.

COSTS

48. Considering that the appeals were declared not admissible, the Court leaves it to the Appellant to bear the costs in accordance with Article 11.2 JDR.



ON THESE GROUNDS,

THE FIA INTERNATIONAL COURT OF APPEAL:

- 1. Declares the appeals not admissible;**
- 2. Orders the competent Sporting Authority to draw, as appropriate, the consequences of this ruling;**
- 3. Leaves it to Alfa Romeo Racing to bear all the costs, in accordance with Article 11.2 of the Judicial and Disciplinary Rules of the FIA;**
- 4. Orders the return to Rich Energy Haas F1 Team and SportPesa Racing Point F1 Team of their third party deposits;**
- 5. Rejects all other and further conclusions.**

Paris, 3 October 2019

The President

Philippe Roberti de Winghe

[The operative part of this decision was notified to the Parties on 24 September 2019]