



NATIONAL COURT OF APPEAL
PUBLIC HEARING OF 17 JUNE 2014

The National Court of Appeal pronounces the following sentence, in the case of:

Mr. Mehmet BESLER,

holder of license Competitor International Karting C n°020108140093 (issued by the Turkish ASN, TOSFED)

legal representative of his underage son Berkay BESLER

Having heard : - Mr. Gérard MARTIN, in his capacity of prosecutor

- Mr. Guy DE NIES, authorized representative of Mr. BESLER

The proceedings have been pursued in the English language as Mr. BESLER does not speak French or Dutch, while he speaks English as the Court does.

Mr. Guy DE NIES had been previously authorized by the Court to represent Mr. BESLER who is residing and competing abroad.

Having seen the evidence submitted to the Court and heard the oral submissions made by the prosecutor.

Having heard the explanations given by Mr. Guy DE NIES, and seen the images on his laptop as he presented them to the Court.

The hearing has been closed after no more relevant person requested the floor.

After deliberation, the National Court of Appeal pronounces the following sentence.

1. OBJECT OF PROCEEDINGS :

Mr. Mehmet BESLER appeals against the decision of the Stewards to exclude his son Berkay following two different collisions during the ROTAX MAX EURO CHALLENGE race in Genk on 6 April 2014.

2. FACTS :

Mr. Mehmet BESLER is engaging his son Berkay BESLER (born 19 February 1999) in the ROTAX MAX EURO CHALLENGE, while Mr. Guy DE NIES is directly linked to him.

Two reports of the Judges of fact have been passed to the Stewards in connection with driver Berkay BESLER (kart nr 98), stating:

- *Dangerous driving against nr 17 at turn 5 he drive over the half kart of nr 17 (camera 55);*
- *Pushes kart 32 off the track (cam. 11.71).*

The Stewards sent convocation to Entrant concerned at 15:25h. Until 17:20h the Entrant had not arrived into the Stewards' office and the Stewards consequently made the following decision (nr 139) without hearing him:

- *Causing avoidable collisions during the race*
- *EXCLUSION #98 FROM FINAL*

Said decision has not been notified to Entrant as he could not be found – again.

The Court cannot understand that neither the Entrant nor the Driver nor any one for them could be reached and receive the convocation, as the premises of the track in Genk cannot be regarded as huge and as the Entrant and his team occupied a tent during the whole meeting. That meeting was reported to the Court as being rather chaotic, which might explain the lack of efficient communication.

The Stewards' decision was notified to the Entrant by a registered letter from the Chairman of the panel of Stewards sent 11 days later, i.e. on 17 April 2014.

That letter stated that an appeal should be notified through his ASN ("CSA") within 96 hours of the confirmed receipt time of the registered letter, and the appeal fee must be paid within the same 96 hours.

The Court has seen evidence that said registered letter was delivered to Mr. BESLER on 7 May 2014 (exact hour not indicated by the Turkish post services).

An appeal was lodged by the Turkish ASN ("TOSFED") on 9 May 2014, unquestionably within 96 hours.

The appeal fee, i.e. 1.000 €, was transferred to the Court on 9 May 2014, at 17:21h, unquestionably within 96 hours.

It has in the meantime been impossible for the Court's services to receive from the organizer, the track responsible or anyone else a copy of the video footages which have been registered during the race.

3. AS TO THE ADMISSIBILITY OF THE PROCEDURE :

As pointed out by the Prosecutor, mistakes have clearly been made as to the applicable regulations.

ROTAX EURO CHALLENGE is an international open event and series. Art. 1 of its sporting regulations provides that they "*shall be run in accordance with the FIA International Sporting Code*" (etc.), ISC.

According to the ISC, the decision of the Stewards did not need to be personally notified to the Entrant, but it rather needed to be published on the official

publications billboard (quoting the hour of posting). Had it been done, the Entrant should have notified the Stewards in writing of his intention to appeal within one hour of the publication of the decision (CSI at. 14.3.2).

A proper appeal should then be filed within 96h of the notification of the intention to appeal (CSI, art. 14.3.3).

The procedure as applied by the panel of Stewards (via the registered letter of their Chairman) was consequently inappropriate and misleading. Even more so when it states that the appeal needs to be filed via the Entrant's ASN while such is not required by CSI, art. 14.4.1 (in addition to a mistaken reference to the Italian ASN instead of the Turkish ASN).

The Panel of Stewards (or their chairman) has confused the applicable appeal rules with those applicable to a *second* appeal in front of the International Court of Appeal in Paris.

Mr. BESLER cannot be held responsible for said mistakes, while he complied in good faith with the indications he received from the Stewards by registered letter.

As the exclusion decision has not been posted before the end of the meeting, the proper term of appeal could not have started. As such a posting is impossible after the meeting, an appeal would be impossible according to the ISC rules.

It would definitely not be fair play to deprive Mr. BESLER of his right to appeal, which may be regarded as a basic procedural right.

It must consequently be considered that derogatory appeal regulations should benefit to Mr. BESLER, as they were stated in the Stewards' registered letter.

The appeal is consequently ruled admissible.

4. AS TO THE MERITS :

The Judges of the fact have observed and noted a dangerous driving by driver Berkay BESLER, and his pushing of another kart.

As a principle, the facts noted by Judges of the fact are deemed established until otherwise is evidenced.

The Stewards may consequently rely on the reports of the Judges of the fact to make their decision. They may also check the validity of their observations by all available means, such as images. In this case, the Stewards have decided to check on the observations of the Judges of the fact (who referred themselves to specific images). The Stewards' decision states that they have seen and checked the corresponding video sequence (and they found the observations of the Judges of the fact to be correct).

It is however impossible for the National Court of Appeal to check these relevant images.

The images shown by Mr. DE NIES are not clear enough for the Court to make a decision on their basis (also because the sequence of images is not absolutely certain and reliable, unlike the official footage).

It is the joint responsibility of the organizer and of the race track to ensure that all race images are preserved and remain available, which is technically easy. It is not admissible that these images have been lost or remain unavailable to the Court of Appeal for any other reason.

It is likely that these images would have allowed the Court of Appeal to confirm the observations of the Judges of the fact and confirm the decision of the Stewards. "Likely" is however not "certain".

Due to the negligence of those in charge of preserving the images, it is impossible for the Court to see them and make a decision consistent with the rights of the defense.

There consequently remains a doubt concerning the facts. Such a doubt must benefit to Mr. BESLER, who is unduly prevented to prove his claim.

Albeit with the benefit of the doubt, the appeal is consequently granted.

FOR THESE REASONS,

The National Court of Appeal,

- Says the appeal is admissible and grounded;
- Cancels the appealed Stewards' decision nr 139 in its entirety ;
- Says that the appeal fee will be returned to Mr. Mehmet BESLER.

Judged at the public hearing of 17 June 2014, the seat being composed of

Jean-Pierre MIGEAL
President

Philippe NORMAND
Judge

André VANSTEYVOORT
Judge