



**Arbitration CAS 2018/A/5916 Lucas Mahias v. Fédération Internationale de Motocyclisme (FIM), award of 25 February 2019 (operative part of 24 October 2018)**

Panel: Mr Michele Bernasconi (Switzerland), Sole Arbitrator

*Motorcycling*

*Disciplinary*

*Scope of the field of play doctrine*

*Limitation of field of play restrictions*

*Reviewability of decisions taken by FIM bodies*

*Interpretation of statutes and regulations of Swiss associations*

1. In case a decision subject to appeal falls under the so-called “field of play” doctrine the CAS panel is bound to exercise an arbitral self-restraint and examine the appealed decision with a limited power of review. Put differently, in principle, field of play decisions cannot be subject of a judicial review, with some few exceptions in cases of blatant bad faith, corruption, *etc.* There are strong sporting rationales in support of the idea that the scrutiny of decisions concerning the “rules of the game” shall be confined to exceptional circumstances: not least, such restrictive approach is required by the need to prevent continuous interruption of competitions and limit the enormous difficulties connected with an *ex post* correction of records and results. As drawing a line between reviewable and unreviewable decisions is not always a straightforward task, the competence for determining what falls within the ambit of the field of play doctrine lies with the relevant sport governing body; therefore, the question as to whether a certain decision is subject to review must be primarily ascertained by consulting the applicable sport regulations.
2. As the restriction of judicial review under the field of play doctrine constitutes a limitation of an appellant’s right to natural justice, it should not be extended beyond what is necessary for the good functioning of sports competition. *E.g.* a decision rendered after the completion of a competition (*e.g.* a sanction imposed on an athlete after a competition is concluded or a three match-day suspension imposed on a football player, as opposed to a decision of a referee during a competition, for instance a red card shown by a referee to a player during a match) and which does not have any direct effect on the on-going competition, does not appear to be a quintessential field of play decision, *i.e.* one which should not be open to review.
3. Articles 3.4.1 and 3.4.2 of the FIM Superbike, Supersport & Supersport 300 World Championships Regulations (“FIM Regulations”) explicitly address the question concerning the reviewability of decisions taken by FIM bodies. From the structure and wording of these provisions it can be inferred that all decisions taken under the authority of FIM are reviewable, unless otherwise provided in the FIM Regulations.

4. **The FIM Regulations – as all other statutes and regulations of associations subject to Swiss law – have to be analysed using the same methods of interpretation as for statutory provisions. This means, in a nutshell, that when interpreting the provisions encompassed by the FIM Regulations, the CAS panel shall not limit its attention to the mere literal meaning of the same, but also has to consider their systematic, teleological and historical dimensions.**

## **I. PARTIES**

1. Mr. Lucas Mahias (“Appellant” or “Mr. Mahias”) is a French motorcycle road racer who, in the 2018 season, competed in the Supersport FIM World Championship.
2. Fédération Internationale de Motocyclisme (“Respondent” or “FIM”) is an association under Swiss law with its registered office in Mies, Switzerland. FIM is the world governing body of motorcycle racing and exercises, *inter alia*, regulatory, supervisory and disciplinary functions over the Supersport FIM World Championship.

## **II. FACTUAL BACKGROUND**

3. Below is a summary of the relevant facts and allegations based on the submissions and evidence produced by both Mr. Mahias and FIM (collectively referred to as the “Parties”). Additional facts and allegations found in the Parties’ submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the legal arguments and evidence submitted by the Parties in the present proceedings, he will refer in his Award merely to those facts and allegations he deems necessary to explain his reasoning.

### **A. The Race**

4. On 16 September 2018, Mr. Mahias participated to Round 10 of the 2018 FIM Supersport World Championship (the “Race”), which took place at the Algarve International Circuit in Portimão, Portugal (the “Circuit”).
5. At the beginning of the 18<sup>th</sup> and last lap of the Race, Mr. Mahias suffered a rear tyre puncture which forced him to stop the bike and leave the track. It appears that after leaning his bike against the guard rail, Mr. Mahias was taken by a scooter that started to bring him back to the pit lane. However, after few seconds Mr. Mahias asked the scooter driver to stop and he ran back to his bike, for the reasons set out below.

6. In fact, around 20 seconds after Mr. Mahias' tyre puncture, at 14:17:22, a crash involving two riders in their 17<sup>th</sup> lap occurred in a different segment of the Circuit. As one of the riders remained on the track, the Race Direction decided to display the red flag, thereby interrupting the Race.
7. From the point of view of Appellant, such interruption had two important consequences dictated by the FIM Superbike, Supersport & Supersport 300 World Championships Regulations ("FIM Regulations"):
  - a. in accordance with Article 1.26.1(2) of the FIM Regulations, the final results of the Race were going to be determined on the basis of the standings at the end of the 16<sup>th</sup> lap – a point at which Appellant was leading the Race;
  - b. pursuant to Article 1.26.1(5) of the FIM Regulations, in order to be officially classified, all riders had to enter the pit lane, pushing or riding on their motorcycle, within 5 minutes from the display of the red flag.
8. With these rules in mind, Appellant returned to his bike, started it again and re-joined the track. While trying to reach the pit lane, due to the abovementioned tire puncture, Mr. Mahias fell twice; yet, in both cases, he managed to get back on his bike and continue riding it.
9. Just before reaching turn 15 ("T15"), the last one of the Circuit, Appellant took a secondary entry leading to the pit lane. Such entry did not belong to the official track of the Race, a circumstance that was signaled by a white line painted on the asphalt as well as by the presence of orange and white cones.
10. Mr. Mahias finally entered the pit lane at 14:22:16, *i.e.* 4:54 minutes after the display of the red flag.

#### **B. The decision of the Race Direction**

11. At 14:24, few moments after Mr. Mahias' arrival in the pit lane zone, the Race Direction took the following decision:

*"According to the Sporting Rules of the 2018 Road Racing FIM Superbike, Supersport & Supersport 300 World Championships Regulations and the FIM Disciplinary and Arbitration Code the Race Direction has decided to consider the rider no. 144 [Lucas Mahias] not classified because after his crash, approaching to the pit lane he left the track (made a short cut at turn 14 and 15) and gained advantage.*

*This is consider as an infringement of the Art. 1.21.3.*

*Instant Penalty has been apply".*

12. As a consequence, Appellant was excluded by the official race results.

**C. The decision of the FIM Stewards**

13. At 15:53, after having paid a deposit of EUR 1'320, Appellant lodged an appeal with the FIM Stewards against the decision of the Race Direction to consider him as “not classified”.
14. The Panel of the FIM Stewards convened a hearing with Appellant, Mr. Filippo Conti (Appellant’s team manager), Mr. Gian Franco Carloia (Race Director), Mr. Delcio Santos (Clerk of the Course) and Mr. Franck Vayssié (FIM Safety Office and member of the Race Direction). During the same, Appellant was given the opportunity to explain the facts of the case.
15. After a 30-minute deliberation, at 17:47, the Panel of the FIM Stewards issued its decision on the matter at hand (the “Appealed Decision”), finding, *inter alia*, the following:

“5. The Panel’s considerations

*The Panel investigated the evidences and organized the hearing. According to the facts the rider left the track and gained advantage which is a breach of the Art. 1.21.3.*

6. The judgement

*Upon these grounds, the FIM Stewards decided:*

- *to confirm the decision of the Race Direction”.*

**III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

16. On 21 September 2018, Mr. Mahias lodged a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “CAS Code”), challenging the Appealed Decision.
17. By letter dated 25 September 2018, the CAS Court Office acknowledged receipt of Appellant’s Statement of Appeal and invited the same to file, within a deadline of 10 days, his Appeal Brief. In addition, the CAS Court Office invited Respondent to take position on Appellant’s proposal to refer the case to a Sole Arbitrator and to resolve the dispute by way of an expedited procedure.
18. On 28 September 2018, Mr. Mahias filed his Appeal Brief in accordance with Article R51 of the CAS Code.
19. On 1 October 2018, the CAS Court Office acknowledged receipt of Mr. Mahias’ Appeal Brief and invited FIM to submit its Answer within a deadline of 20 days.
20. On 4 and 5 October 2018, Respondent and Appellant communicated to the CAS Court Office that the Parties had reached an agreement on the expedited procedure timetable and that, according to the same, Respondent was given time until 16 October 2018 to file its Answer.

Also, Appellant submitted to the CAS Court Office a list of arbitrators jointly proposed by the Parties to sit as Sole Arbitrator in the present proceedings.

21. On 16 October 2018, Respondent filed to the CAS Court Office a request for extending the deadline for submission of its Answer to 18 October 2018 at 12:00 pm (noon).
22. By letter dated 17 October 2018, the CAS Court Office invited Appellant to comment, before 4:00 pm of the same day, on Respondent's request for a deadline extension. In the said letter, the CAS Court Office also notified the Parties that the Panel in the present procedure was constituted by Mr. Michele A. R. Bernasconi, attorney-at-law, Zurich, Switzerland, as a Sole Arbitrator, who would be assisted by Mr. Matteo Suckow, MLaw, Zurich, Switzerland, as *ad hoc* Clerk.
23. On the same date, upon receipt of Appellant's comments in such regard, the CAS Court Office communicated to the Parties – on behalf of the Sole Arbitrator – that Respondent was granted an extension until 18 October 2018 at 9:00 am to file its Answer.
24. On 18 October 2018, FIM submitted its Answer. In the same, FIM requested to be authorized to file a further exhibit, in the form of a video clip, by 19 October 2018.
25. On the same day, Appellant sent a letter to the CAS Court Office in which it asked the Sole Arbitrator: (i) to reject Respondent's request to submit a further exhibit by 19 October 2018; and (ii) to declare inadmissible those exhibits that Respondent filed by email of 18 October 2018 at 10:04, *i.e.* one hour and four minutes after the expiry of the relevant deadline.
26. By letter of 18 October 2018, after having taken note of Appellant's comments on this issue, the CAS Court Office granted Respondent, on behalf of the Sole Arbitrator, a time limit until 19 October 2018 at 11:30 am to file the abovementioned video. The latter was then provided by Respondent on the same day.
27. On 19 October 2018, the CAS Court Office advised the Parties that the Sole Arbitrator had decided to admit on the file the exhibits filed by Respondent by email of 18 October 2018 at 10:04.
28. On 22 October 2018, a hearing was held in Lugano, Switzerland. The Sole Arbitrator was assisted by the *ad hoc* Clerk, and joined by the following:

For Appellant:

- Mr. Alberto Ziliani (Counsel for Appellant);
- Mr. Gianpaolo Monteneri (Counsel for Appellant);
- Ms. Anna Smirnova (Counsel for Appellant).

For Respondent:

- Mr. Richard Perret (FIM Deputy CEO and Legal Director);
  - Mr. Franck Vayssié (SBK and Supersport FIM Safety Officer and member of FIM SBK and Supersport Race Direction).
29. At the beginning of the hearing, the Parties agreed to renounce calling Mr. Nicola Sartori Vomiero, expert witness nominated by Appellant, to testify in the present proceedings.
30. At the conclusion of the hearing, the Parties acknowledged that their right to be heard had been fully respected and, in view of the urgency of the case, asked the Sole Arbitrator to render his decision – limited to the operative part – by 24 October 2018.
31. By letter dated 23 October 2018, the CAS Court Office advised the Parties, on behalf of the Sole Arbitrator, that they were granted a deadline until 20:00 of the same day to file, on a voluntary basis, their comments on Articles 1.21.1-1.21.25 – and notably Articles 1.21.2, 1.21.3, 1.21.9, 1.21.14, 1.21.16, 1.21.18 and 1.21.22 – of the FIM Regulations. Both Appellant and Respondent filed their comments on the abovementioned provisions within the deadline set by the CAS Court Office.
32. On 24 October 2018, the CAS Court Office provided the Parties with the operative part of the Award, issued by CAS on the same day.

**IV. SUBMISSIONS OF THE PARTIES**

33. The following is a brief summary of the Parties' submissions and does not purport to include every contention put forth by them. Nonetheless, the Sole Arbitrator has thoroughly considered all of the evidence and arguments submitted by the Parties.

**A. Appellant's position**

34. In his Statement of Appeal and Appeal Brief, Mr. Mahias submitted to CAS the following requests for relief:

- “1. To set aside the [*Appealed*] Decision;
2. To set aside the ranking of the Round 10 and to replace it by a new ranking including the Appellant;
3. To establish that the Appellant was classified at the end of the Round 10;
4. To establish that the Appellant has won the Round 10 and has gained 25 points in the Championship Standings;
5. In the event that the above is not accepted:

- i. To establish that the sanction imposed by the Respondent on the Appellant is disproportionate;*
    - ii. To replace the sanction imposed on the Appellant by a proportionate and milder sanction.*
  - 6. *To order the Respondent to adjust the Championship Standings in accordance with the outcome of the present procedure;*
  - 7. *To condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred;*
  - 8. *To establish that the costs of the present arbitral proceedings, if any, shall be borne by the Respondent”.*
35. Appellant’s submissions, in essence, may be summarised as follows:

As to the facts of the case and the applicability of Article 1.21 of the FIM Regulations

- a. The FIM Stewards, when passing the Appealed Decision, assessed the relevant facts of the case in an erroneous manner. This, in turn, led to the application of wrong provisions of the FIM Regulations – namely Article 1.21, in general, and Article 1.21.3, specifically.
- b. The most important mistake committed by the FIM Stewards was to oversee that, by virtue of Article 1.26.1 and Article 1.26.4 of the FIM Regulations, the display of the red flag had led to the formal conclusion of the Race. Had the FIM Stewards correctly recognized this point, they would have not applied Article 1.21 of the FIM Regulations, which – as clearly stated in its title – deals with the behaviour of riders during (and not after) practice and race.

As to Appellant’s compliance with the applicable provisions

- a. Inasmuch as Article 1.21.3 of the FIM Regulations is not applicable, the Panel of the FIM Stewards should have limited itself to adjudicate Appellant’s behaviour under the perspective of Article 1.26.1 of the FIM Regulations.
- b. Article 1.26.1 of the FIM Regulations “states that when the Race Director decides to interrupt a race, riders need to slow down and return to the pit lane in order to be classified. This provision does however neither state the way the riders need to take in order to return to the pit lane nor the entry they need to take for entering the pit lane”. Further, the time limit of five minutes set by Article 1.26.1(4) of the FIM Regulations was introduced “in first line for broadcasting reasons, in order to have all the bikes of the qualified riders in the “Park Fermé” during the award ceremony”, and, in addition, “in order to avoid that a rider may deliberately cause an accident remaining on the track in order to force the interruption and the conclusion of the race (particularly to his personal benefit)”.
- c. Having due regard of the above, it must be concluded that Appellant complied with Article 1.26.1 of the FIM Regulations – that means, with the only provision that should have been considered by the FIM Stewards in the present matter.

As to the non-binding nature of Article 1.21.3 of the FIM Regulations

- a. Even assuming that Article 1.21.3 of the FIM Regulations was applicable to the circumstances at hand, it would nevertheless be impossible to argue that Mr. Mahias violated it, given the non-binding nature of this provision.
- b. As a matter of fact, the auxiliary verb “should” – used in the first sentence of Article 1.21.3 (*“riders should use only the track and the pit-lane”*) – denotes *“an advice, recommendation or moral obligation from which it can be deviated”*. In this sense, *“by applying the first sentence of Art. 1.21.3 of the [FIM] Regulations, the Appellant was entitled to deviate from the use of the track and pit lane without apprehension of committing a violations of the [FIM] Regulations”*.
- c. This is also in line with the second sentence of Article 1.21.3 of the FIM Regulations, which is based on another “non-compelling” auxiliary verb, *i.e.* the verb “may” (*“if a rider accidentally leaves the track then he may re-join it at the place indicated by the officials or at a place which does not provide an advantage to him”*). The adoption of such verb - instead of the verb “must” – is a clear evidence of the fact that a rider leaving the track (such as Appellant) has the opportunity, if he so wishes, to re-join the track; yet, he is not obliged to act this way, and can consequently not be sanctioned for this reason.

As to the proportionality of the sanction imposed

- a. Finally, even assuming that Mr. Mahias violated Article 1.21.3 of the FIM Regulations, it must be stressed that the sanction imposed on him – which is the strongest sanction possible under such circumstances – is evidently and grossly disproportionate to the offence committed.
- b. In the first place, this lack of proportionality is due to the fact that the decision of the FIM Stewards is based on the incorrect assumption *“that Appellant cut the T14 and T15, whereas in reality [the] secondary entry of the pit lane is in the T15, i.e. the last curve of the circuit and therefore only this curve was cut”*.
- c. Additionally, the severity of the sanction imposed against Appellant suggest that the FIM failed to take into due consideration the mitigating circumstances which are related to the alleged infringement committed by him, among others:
  - *“The [FIM] Regulations are silent on the way and the entry the riders shall take for returning to the pits; the Appellant was therefore in good faith convinced of being entitled to use the secondary entry to the pit lane”*;
  - *“The Appellant used the secondary entry of the pit lane for security reasons in order not to spill oil and fuel on the track, considering that another race was due to be staged immediately after the Race”*;
  - *“The Appellant returned to the pit lane in 4:54 minutes and even if he had continued on the track and entered the pits through the main entry, he was [according to the calculations made by Ing. Nicola*



*Sartori Vomiero]* still below five minutes; “he did therefore not have any advantage or any relevant advantage by using the secondary entry of the pit lane”.

- There are “milder sanctions [that] could and should have been imposed on the Appellant for the alleged violation of the Regulations, such as a warning, a fine or even the withdrawal of few Championship points”.

As to the “field of play” doctrine and the reviewability of the Appealed Decision

- a. The responsibility for defining the term “field of play” and for determining the reviewability of “field of play” decisions lies with FIM. The latter made use of such competence in Article 3.4.2 (3) of the FIM Regulations, which encompasses an exhaustive list of those decisions against which no appeal can be lodged with CAS. Considering that the Appealed Decision does not fall under any of the categories described in Article 3.4.2(3), it must be concluded that the same is not a “field of play” decision.
- b. Also, in order for a decision to be considered as belonging to the “field of play”, the latter must have an immediate impact on the “playing”, respectively – in connection with motorcycling – on the “racing”. Yet, this is not the case in the matter at hand, as in the moment in which the decision was taken the results of the Race were already definitive.

**B. Respondent’s position**

36. In its Answer, FIM requested CAS to rule on the present disputes as follows:

- “1. *The Answer of FIM is admissible.*
- 2. *The Appeal of the Appellant is dismissed. Consequently:*
  - i. *The Decision of the FIM Stewards is upheld.*
  - ii. *The Decision of the Race Direction is confirmed.*
  - iii. *The ranking and results of Round 10 of the 2018 FIM Supersport World Championship as published on 16 September 2018 by FIM are confirmed.*
- 3. *The FIM is granted a contribution towards its costs and expenses.*
- 4. *The Appellant bears all costs incurred in connection with these proceedings”.*

37. Respondent’s submissions, in essence, may be summarised as follows:

As to the “field of play” doctrine and the reviewability of the Appealed Decision

- a. Pursuant to long-standing CAS jurisdiction, so-called “field of play” decisions cannot be reviewed by CAS *“unless there is a persuasive evidence that there has been arbitrariness or bad faith in arriving at such decision[s], even when that decision[s] [are] recognized as being wrong, with the benefit of hindsight”*.
- b. In the matter at hand, *“it is clear from the content of [Article] 1.6.5 that the Race Direction’s task is to deal with matters arising in connection with what is happening on and around the circuit during the event”*. Under this perspective, it is submitted that *“the decision taken ex officio by the Race Direction in accordance with Article 1.6.5 lit. a-c of the Regulations, and the Decision of the FIM Stewards (see Article 3.3.2 of the Regulations), [are] both field of play decisions”*. In particular, as concerns the FIM Stewards, *“it is worth noting that the [latter] enjoy exactly the same powers as those of the Race Direction and that they are “field referees” as the Race Direction members are”*.
- c. Further, it is maintained that *“the circumstances of the case pertaining to the disqualification of the Swimmer Aurélie Muller [at the 2016 Olympic Games] may be compared to these of the Appellant since they share many similarities to the extent that they may almost be deemed as similar”*. Therefore, when adjudicating the present dispute, the Sole Arbitrator should follow the reasoning adopted by the Panel in the CAS-OG 16/027 case, and most notably recognize that:
  - *“The ‘immediate’ nature of a decision to disqualify someone according to the applicable regulations must be reasonable in view of the circumstances as a whole”*. Accordingly, in case the supervision of a race is affected by difficult conditions, a certain amount of time is needed for an important decision – such as one to disqualify an athlete – to be taken;
  - *“[A] purely technical decision, based on the Regulations that are the responsibility of the Federation concerned, should not be reviewed by [a CAS] Panel. This restraint is all the more necessary because, being far from the action, the [CAS] Panel is less well placed to decide than the field referee or the ring judges”*.
- d. Taking into account the above and considering that Appellant does not claim that *in casu* either the Race Direction or the FIM Stewards acted arbitrarily or in bad faith, it has to be concluded that the Appealed Decision should not be reviewed by the Sole Arbitrator.

As to Article 1.26.1 of the FIM Regulations and the qualification of Appellant as “actively competing”

- a. The first, and most important, reason why the Race Direction should have decided not to classify Mr. Mahias is actually not connected with Article 1.21.3 of the FIM Regulations, but rather with the fact that he failed to comply with the requirements set out in Article 1.26.1(4) of the FIM Regulations.
- b. As a matter of fact, it must be noted that in the moment in which the red flag was displayed, Appellant had already suffered the rear tyre puncture and, in view of his inability

to continue the race, had left his bike at the side of the track and made his way back to the pit-boxes. At this very point in time, therefore, Appellant was not “actively competing” and, by virtue of Article 1.26.1(4) of the FIM Regulations, was not eligible anymore for being classified in the final ranking.

- c. Under this perspective, it can be said *“that the Race Direction and the FIM Stewards took field of play decisions that were correct with regard to the sanction imposed but that, arguably, the reasons given for the decisions were not the most apposite”*.

#### As to the facts of the case and the applicability of Article 1.21 of the FIM Regulations

- a. The argument adduced by Appellant, according to which Article 1.21 is not applicable after the end of the race (*i.e.* after display of the red flag), is not tenable *“since the end of a Race is clearly defined by Article 3.4.3 of the [FIM] Regulations [...] as the sooner of: the last active rider crossing the finish line after the chequered flag or 5 minutes after the leader crosses the finish line following the display of the chequered (or red) flag”*.
- b. With respect to the fact that the turn cut by Mr. Mahias was only one (T15), and not two (T14 and T15) – as indicated in the Appealed Decision – it should be mentioned that this aspect *“is a minor point and was not taken into consideration by the Race Direction or the FIM Stewards”*.

#### As to the non-binding nature of Article 1.21.3 of the FIM Regulations

- a. The argument presented by Appellant concerning the non-binding nature of Article 1.21.3 of the FIM Regulations is misplaced. In this respect, it is important to clarify that the word “should” is not used in the said provision to *“express advice, recommendation or moral obligation in contrast to ‘shall’, but in order to reflect the various (three) possible ways in which a rider may leave a track, two of which are involuntary”*. Indeed, during a race, a rider may leave a track deliberately or involuntary – and this, in turn, either because he is pushed or because of a riding mistake.
- b. In any event, the sanction that can be imposed against a rider for leaving the track is not directly connected to the wording used in Article 1.21.3, but it rather depends on a range of circumstances that are related to this kind of behaviour (*e.g.* in case of repeated infringements).

#### As to the proportionality of the sanction imposed

- a. Contrary to Appellant’s view, the sanction imposed against him can by no means be regarded as disproportionate. This, *inter alia*, if one considers the following elements:
  - *“[T]he serious infringement of [Mr. Mahias] (i.e. crossing a white line unambiguously signaled with cones) is undeniable;*

- [T]he offence was perpetrated deliberately (i.e. with intent);
- Even without applying Article 1.21.3 of the FIM Regulations, Mr. Mahias should have been considered as “not classified” on the basis of Article 1.26.1(3), given that he had already withdrawn from the Race in the moment in which the red flag was displayed.

## V. JURISDICTION

38. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*

39. In the present case, the jurisdiction of CAS derives from Article 3.9 of the FIM Regulations, as this latter provision stipulates that:

*“[f]inal decisions made by the disciplinary bodies [...] of the FIM may be submitted exclusively to the Court of Arbitration for Sport by way of appeal within the time limit as laid down in article 3.4.6, which shall have exclusive authority to impose a definitive settlement in accordance with the Code of Arbitration applicable to sport”.*

40. In light of this, and taking into consideration that the jurisdiction of CAS is not disputed by the Parties, the Sole Arbitrator holds that CAS is competent to adjudicate on and decide this dispute.

## VI. APPLICABLE LAW

41. Article R58 of the CAS Code reads as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

42. Article 4(1) of the FIM Statutes provides as follows:

*“The FIM is incorporated in Switzerland and has established its headquarters in Mies (canton of Vaud), Switzerland. [...]. The legal status of the FIM is subject to Swiss Law; any contention between the FIM and its bodies or members, as well as litigation between the FIM and organisations or individuals associated or in any relationship with the FIM, in particular licensed riders, are governed by Swiss law”.*

43. The Sole Arbitrator observes that both Parties in their submissions make repeated reference to the FIM Regulations and declare that Swiss law shall be subsidiarily applicable.
44. Accordingly, the Sole Arbitrator holds that the dispute at hand must be decided applying primarily the FIM Regulations and, complementarily, Swiss law.
45. The provisions being mainly relevant for the purposes of the present proceedings are the following rules of the FIM Regulations:

1.21 – Behaviour during practice and race

– 1.21.3

*“Riders should use only the track and the pit-lane. However, if a rider accidentally leaves the track then he may re-join it at the place indicated by the officials or at a place which does not provide an advantage to him.*

*Any infringement of this rule during the practices or warm up will be penalised by the cancellation of the lap time concerned and during the race, by a penalty decided by the Race Direction.*

*[...]”.*

– 1.21.9

*“Riders are not allowed to transport another person on their motorcycle or to be transported by another rider on his motorcycle (exception: Another rider or by another rider after the chequered flag or red flag)”.*

– 1.21.18

*“It is not permitted to ride racing motorcycles within the circuit other than in the pit lane or on the track”.*

1.26 – Interruption of a race

– 1.26.1

*“If the Race Director decides to interrupt a race, then red flags will be displayed at the finish line and at all marshals’ posts and he will switch on the red lights around the circuit. Riders must immediately slow down and return to the pit lane.*

*The results will be the results taken at the last point where the leader and all other riders on the same lap as the leader had completed a full lap without the red flag being displayed.*

*Exception: if the race is interrupted after the chequered flag, the following procedure will apply [...].*

*At the time the red flag is displayed, riders who are not actively competing in the race will not be classified.*

*Within 5 minutes after the red flag has been displayed, riders who have not entered the pit lane, pushing or riding on their motorcycle, will not be classified”.*

– 1.26.4

*“If the results calculated show that two-thirds of the current race distance rounded down to the nearest whole number of laps have been completed by the leader of the race and by all other riders on the same lap as the leader, then the race will be deemed to have been completed and full Championship points will be awarded”.*

3.4 – Protests and appeals

– 3.4.1 Right of protest

*“Any legal entity or any individual, rider, team, manufacturer, official etc. affected by a decision taken under the authority of the FIM, has the right to protest against that decision.*

*No protest may be lodged against a decision of the Race Direction entailing or not:*

- *a drop of position.*
- *a ride through.*
- *a disqualification from the practice sessions or races by means of a black flag or black flag with orange disc.*
- *a fine for speeding in the pit lane.*

*No protest may be lodged against a decision of the Race Direction based on a photo finish”.*

– 3.4.2 – Right of appeal

*“The rules concerning appeals against FIM disciplinary decisions are:*

*1. To the FIM Stewards against a decision of the Race Direction*

*No appeal may be lodged against a decision entailing or not:*

- *a drop of position*
- *a ride through*
- *a disqualification from the practice sessions or races by means of a black flag or black flag with orange disc*
- *a disqualification from the practice sessions or the race(s) following a positive results to the breath alcohol test carried out at such event*
- *a fine for speeding in the pit lane.*

*No appeal may be lodged against a decision based on a photo finish.*

*When no appeal may be lodged the decision of the Race Direction decision is final.*

*[...].*

*3. To the CAS*

*No appeal may be lodged against a decision entailing or not:*

- *a drop of position*
- *a ride through*
- *a disqualification from the practice sessions or races by means of a black flag or black flag with orange disc*
- *a disqualification from the practice sessions or the race(s) following a positive results to the breath alcohol test carried out at such event*
- *a fine for speeding in the pit lane.*

*No appeal may be lodged against a decision based on a photo finish”.*

## **VII. ADMISSIBILITY**

46. The Appealed Decision was rendered on 16 September 2018. The Statement of Appeal was filed by Appellant on 21 September 2018, hence within the deadline of 5 days set by Article 3.4.6 of the FIM Regulations.
47. Appellant complied with all other requirements stipulated by Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
48. As to the objection raised by Respondent in relation to the “field of play” doctrine, the Sole Arbitrator considers this issue to pertain to the merits of the Appeal, and not to its formal admissibility (cf. also CAS 2015/A/4208, para. 43). Consequently, the issue will be addressed by the Sole Arbitrator in Section VIII below.
49. In view of the above, the Sole Arbitrator finds that the Appeal is admissible.

## **VIII. MERITS**

### **A. Preliminary matter: “field of play” doctrine**

50. As a preliminary matter, before entering into the actual merits of the dispute at hand, the Sole Arbitrator must determine whether the Appealed Decision falls, as argued by Respondent, under the so-called “field of play” doctrine. If so, then the Sole Arbitrator would be bound to exercise an arbitral self-restraint and examine the Appealed Decision with a limited power of review (see CAS 2010/A/2090, para. 35.1).

**a. Legal discussion**

51. Having the opportunity to discuss the “field of play” doctrine, the Sole Arbitrator wishes first of all to stress that he fully endorses the interpretation and respect of such theory in the past CAS jurisprudence. The Sole Arbitrator shares the view of other CAS Panels that the principle according to which field of play decisions cannot be subject of a judicial review, with some few exceptions in cases of blatant bad faith, corruption, etc. is of crucial importance for the functioning of the whole sports system.
52. In this sense, the Sole Arbitrator is convinced that there are indeed strong sporting rationales in support of the idea that the scrutiny of decisions concerning the “rules of the game” shall be confined to exceptional circumstances. Not least, such restrictive approach is required by the need to prevent continuous interruption of competitions and limit the enormous difficulties connected with an ex post correction of records and results (see CAS OG 00/013).
53. That being said, the Sole Arbitrator notes that drawing a line between reviewable and unreviewable decisions is not always a straightforward thing to do. Quite the reverse, in some circumstances defining with precision the boundaries of the “playing field” is a complicated task, one that requires an in-depth understanding of the peculiarities of the sport discipline in question and of the repercussions that such differentiation could have on the competition itself. With this in mind, the Sole Arbitrator agrees with Appellant that the competence for determining what falls within the ambit of the “field of play” doctrine lies with the relevant sport governing body and, therefore, the question as to whether a certain decision is subject to review must be primarily ascertained by consulting the applicable sport regulations (in this respect, see also LEBBON M., Field of play decisions and fairness: lessons from Sirengate, in: Australian and New Zealand Sports Law Journal, p. 123).
54. Turning to the present matter, the Sole Arbitrator notes that Articles 3.4.1 and 3.4.2 of the FIM Regulations explicitly address the question concerning the reviewability of decisions taken by FIM bodies. From the structure and the wording of these provisions, it can be inferred that the same rest on the principle that all decisions taken under the authority of FIM are reviewable, unless otherwise provided in the FIM Regulations.
55. In line with this approach, the Sole Arbitrator notes that Article 3.4.2(1) and (3) of the FIM Regulations contain a list of different types of decisions – all of which refer to situations of race or practice, and are thus directly connected to the “field of play” – for which an appeal to the FIM Stewards, respectively to CAS, is indeed explicitly excluded.
56. In this connection, it shall be highlighted that none of the categories mentioned in such list of non-reviewable field of play decisions seems to apply to the Appealed Decision. Rather, the opposite impression is given by the fact that the non-appealability of decisions entailing a disqualification of the rider – a kind of sanction being *de facto* very similar to the one at hand, *i.e.* the “non-classification” of Mr. Mahias – is very precisely limited to cases in which the black flag (with or without orange disc) was displayed or the alcohol test results were positive. In addition, the list is formulated in an exhaustive manner, *i.e.* it does not leave open room for other matters.



57. Seen under the perspective of an *argumentum a contrario*, this circumstance strongly suggests that the Appealed Decision does not belong to such kind of decisions that, in Respondent's eye, are intended to be "immune" from judicial review.
58. Such conclusion is corroborated by the fact that Respondent itself – respectively, the FIM Stewards – accepted to adjudicate the appeal submitted by Appellant against the decision of the Race Direction, thereby implicitly acknowledging that the latter did not fall within the exceptions listed in Article 3.4.2(1) of the FIM Regulations (concerning appeals to the FIM Stewards), which are exactly specular to those enshrined in Article 3.4.2(3) (concerning appeals to CAS).
59. In addition, the Sole Arbitrator finds that considering the Appealed Decision capable of being scrutinized by CAS appears to be particularly reasonable when taking into account all the interests at stake in the present dispute. It should in fact not be forgotten that the restriction of a judicial review constitutes a limitation of the athletes' right to natural justice, a condition which – in the Sole Arbitrator's view – should not be extended beyond what is necessary for the good functioning of sports competition. In the case at hand, it is important to note that the sanction against Mr. Mahias was decided by the Race Direction after completion of the Race, and thus – contrary, for instance, to a black flag – did not have any direct effect on the on-going competition. From this point of view, the Appealed Decision does not appear to be a quintessential "field of play" decision, that is, one which should not be open to review. Insofar, the Appealed Decision looks more like a sanction imposed on an athlete after a competition is concluded, for example a three match-day suspension imposed on a football player, rather than to a decision of a referee during a competition, for instance a red card shown by a referee to a player during a match.
60. Finally, for the sake of completeness, the Sole Arbitrator observes that the case cited by Respondent in support of its position (CAS-OG 16/027) is not comparable to the circumstances at hand. In this respect, it is first worth to clarify that the Panel, in the said procedure, was not confronted with a provision of the kind of Article 3.4.2(3) of the FIM Regulations, *i.e.* one setting out in detail against which competition-related decisions athletes may, or may not, file an appeal with CAS. Secondly, it has to be noted that the excerpt of the Panel's findings reported by Respondent did not concern the reviewability of the decision in question or the "field of play" doctrine, but rather it merely discussed the question as to whether such decision had effectively been taken "immediately" (as required by the applicable FINA rules). As such, the reasoning of the CAS Panel in the CAS-OG 16/027 case is not applicable to the present dispute.

**b. Conclusion**

61. In view of the above, the Sole Arbitrator is satisfied that the Appealed Decision is not of a field of play nature and, therefore, it does not raise any issue of restriction of judiciary review.
62. Accordingly, in conformity with Article R57 of the CAS Code, the Sole Arbitrator will adjudicate the dispute before him with full power of review, meaning – *inter alia* – that he will

examine the facts and the legal issues at stake on a *de novo* basis, without feeling bound by the findings of, or the evidence and arguments presented before the previous instances (see, e.g., CAS 2002/A/383, para. 71 as well as CAS 2004/A/714 para. 57).

## **B. The Appealed Decision**

63. In the Sole Arbitrator's view, in order to determine whether the decision not to classify Appellant in the final Race results – decision taken by the Race Direction and confirmed by the FIM Stewards – was correct, it is necessary to examine and answer the following questions:

- a. Should Mr. Mahias have been ruled out of the final Race results because he was “not actively competing” at the moment in which the red flag was displayed?
- b. Does the display of the red flag – respectively, the consequent interruption of the Race – exclude the applicability of Article 1.21 of the FIM Regulations and all provisions contained therein?
- c. Did Mr. Mahias contravene Article 1.21.3 of the FIM Regulations?
- d. Did Mr. Mahias contravene other provisions encompassed by Article 1.21 of the FIM Regulations?

***a. Should Mr. Mahias have been ruled out of the final Race results because he was “not actively competing” at the moment in which the red flag was displayed?***

64. According to FIM, the Race Direction and the FIM Stewards should have found, in the first place, that Mr. Mahias was unable of being classified due to the fact that, at the moment in which the red flag was displayed, he was not an active participant within the meaning of Article 1.26.1(4) of the FIM Regulations.

65. FIM maintains that neither the Race Direction nor the FIM Stewards were aware that Mr. Mahias, after having left his bike on the side of the track, got on a moto-taxi to return to the pit lane.

66. In this respect, the Sole Arbitrator observes that – as confirmed by Respondent during the hearing – the FIM Regulations do not include a precise definition of the expression “actively competing”. Also, in its submissions, Respondent did not provide any information as to the objective criteria being relevant for determining whether or not a rider is actively participating to a race.

67. Against this uncertain legal background, the Sole Arbitrator does not believe to be in the position of identifying upon which moment a rider must necessarily be seen as having lost his status of “active participant”; this, even more, taking into account that in the context of motorcycle racing it is not uncommon to see riders leaving and re-joining the competition because of a crash or a technical problem.

68. The Sole Arbitrator is therefore of the view that it would not be appropriate for him to correct the only official document reporting the status of the riders participating to the Race (*i.e.* the Results Race, and in particular the second page where incidents relating to single riders are recorded, with indication of the exact time; produced by Appellant as Exhibit A-5). On this document, at the time “14.17.01” it is indicated that the rider “144 Mahias” had “Technical Problem”. The rider was not, unlike others previously, described as being “Out”. At the time “14.17.22” the record shows “RED FLAG”. Only at the time “14.23.55” the rider “144 Mahias” was described to be “Out”. This record confirms that when the red flag was displayed, Appellant was not deemed to be “Out” yet, and so he was an active participant still.
  69. To conclude, the Sole Arbitrator has some sympathy for the argument of Respondent that a rider that leaves his bike at the side of a circuit and starts to walk or drive on a moto-taxi back to the start line, can be perceived as having stopped to participate in the race. However, this argument does not satisfy the Sole Arbitrator that the Appellant shall be deemed as having lost his status of active participant. This in particular (i) in lack of any specific rule of FIM (and FIM may indeed consider to regulate this issue in the future) and (ii) considering that the official Race Document mentioned above reports the Appellant to be with “technical problems” and not “out of competition” yet.
- b. Does the display of the red flag – respectively, the consequent interruption of the Race – exclude the applicability of Article 1.21 of the FIM Regulations and all provisions contained therein?***
70. Appellant submits that Article 1.21 of the FIM Regulations should not be deemed relevant for the purposes of the present dispute, as the latter – according to its title – only deals with the riders’ “*behaviour during practice and race*”, and thus does not apply to a situation, as the one at hand, in which the race is concluded by virtue of Article 1.26.4 of the FIM Regulations.
  71. As a preliminary step, the Sole Arbitrator deems important to recall that the FIM Regulations – as all other statutes and regulations of large associations subject to Swiss law – have to be analysed using the same methods of interpretation as for statutory provisions (*cf., inter alia*, the Decision of the Swiss Federal Supreme Court 4A\_600/2016 of 29 June 2017, at 3.3.4.1). This means, in a nutshell, that when interpreting the provisions encompassed by the FIM Regulations, the Sole Arbitrator shall not limit his attention to the mere literal meaning of the same, but has also to consider their systematic, teleological and historical dimensions.
  72. On this basis, the Sole Arbitrator finds that the interpretation of Article 1.21 and Article 1.26.4 shall take into adequate account the context in which these provisions are embedded and the objectives they pursue. In particular, the Sole Arbitrator is of the view that in Article 1.26.4, on the one side, and in the title of Article 1.21, on the other side, the term “race” is used and intended in a different manner.
  73. In the first case, “race” is used in a narrow sense, that is, as a synonym of “competition”. This becomes clear when observing that Articles 1.26.2-4 of the FIM Regulations do all concern an

issue strictly related to the competitive essence of the race, namely that of the number of championship points which shall be awarded if the red flag is displayed.

74. Conversely, in the second case, the true meaning conferred to the term “race” seems to be broader, so as to indicate the race as “event”, without being limited to pure racing activities. Such conclusion must be drawn when considering that the scope of application of some of the rules contained in Article 1.21 of the FIM Regulations evidently exceed the ambit of the competition *stricto sensu*. This is true, for instance, for Articles 1.21.16-17, which are exclusively concerned with the riders’ behaviour after the chequered flag, *i.e.* after the end of the competition. Noteworthy is also Article 1.21.9 of the FIM Regulations, which – in relation to the prohibition of transporting passengers on racing motorcycles – imposes two different regimes for the time during and the time after the competition.
75. In view of the above considerations, the Sole Arbitrator concludes that the display of the red flag – respectively, the conclusion of the competition foreseen by Article 1.26.4 of the FIM Regulations – does not *per se* exclude the applicability of Article 1.21 of the FIM Regulations. Rather, whether or not a specific rule listed under such article is applicable after the red flag has been displayed must be ascertained by analysing and interpreting each provision individually.

**c. *Did Mr. Mahias contravene Article 1.21.3 of the FIM Regulations?***

76. Following the foregoing reasoning, in order to establish whether Appellant committed an infringement of Article 1.21.3 of the FIM Regulations, it has first to be clarified whether such provision can be applied in the context of a red-flag regime.
77. Taking Article 1.21.3 of the FIM Regulations into closer scrutiny, it can be observed that this provision is based on one of the most important principles underlying racing sports in general, namely, the idea that all riders taking part to a race shall follow the same track, and that no advantages may be gained by intentionally or unintentionally deviating from the latter. The rationale behind this principle is that of ensuring that all riders compete under the same conditions, so that their performances – measured on the basis of the time needed to complete a race – can be effectively compared.
78. Considering such rationale, it appears that rules as the one established by Article 1.21.3 of the FIM Regulations are primarily intended to regulate situations of on-going competition, in which participants are racing against each other and every tenth of a second unfairly gained may influence the final result. Under this perspective, the Sole Arbitrator is of the view that it would be unreasonable to assume that Article 1.21.3 may continue to apply after the display of the red flag and the consequent conclusion of the race by reason of Article 1.26.4.
79. In this respect, the Sole Arbitrator’s belief is bolstered by the following considerations:
  - a. According to Article 1.26.1(5) of the FIM Regulations, riders have to return to the pit lane within 5 minutes after the red flag has been displayed. Yet, such obligation cannot be seen as creating competition among riders, as the amount of time needed to reach the pit lane

does not have any influence on the results of the race. Besides, the Sole Arbitrator notes that Respondent has never substantively contested or otherwise taken position on Appellant's argument that the said time limit of 5 minutes is of mere organizational nature, being mainly motivated by broadcasting reasons;

- b. Various provisions included in the FIM Regulations give the overall impression that the period of time immediately following the display of either the red or the chequered flag is characterized by a degree of flexibility and indulgence which would not be imaginable just few seconds before the flags are displayed, *i.e.* under racing conditions. A perfect example is represented by the abovementioned Article 1.26.1(5) of the FIM Regulations, which explicitly permits riders after the flag is displayed to push their bikes in order to reach the pit lane – a circumstance which, as confirmed by Mr. Vayssié at the hearing, would never be tolerated before the flag is displayed, *i.e.* during an on-going competition. Such difference in approach is, *inter alia*, also readily identifiable in Article 1.21.9 of the FIM Regulations, which, in relation to the time after the display of the chequered or the red flag, expressly provides for an exception to the general prohibition of transporting passengers on racing motorcycles.
80. The rationale of the difference imposed on the behaviour of riders during or after the end of a race is obvious: during a race some behaviours are violating the level playing field (not following the same track) and/or are potentially extremely dangerous (pushing a bike, carrying another rider on the bike, etc.). After the race, just a few seconds after the flag is displayed, the situation is different and riders can do actions that just few seconds before were strictly prohibited.
81. Having taken all of the elements above into account, the Sole Arbitrator comes to the conclusion that the scope of application of Article 1.21.3 of the FIM Regulations does not extend to that stage of the race which follows the display of the red flag. With respect to the matter at hand, this means that the Race Direction and the FIM Stewards could and should have not sanctioned Mr. Mahias on the basis of such provision.

***d. Did Mr. Mahias contravene other provisions encompassed by Article 1.21 of the FIM Regulations?***

82. Having clarified that Mr. Mahias did not contravene Article 1.21.3 of the FIM Regulations, it finally must be determined whether or not the Appellant, by taking a secondary, unofficial entry of the pit lane, did violate other rules (*i.e.* obligations not solely related to the competition *stricto sensu*) postulated by Article 1.21 of the FIM Regulations.
83. In such regard, the Sole Arbitrator deems that particular attention must be given to Article 1.21.18 of the FIM Regulations, which provides for a general prohibition of riding “*racing motorcycles within the circuit other than in the pit lane or on the track*”. Based on the evidence submitted, the Sole Arbitrator is satisfied that in the present case the secondary entry was unambiguously signaled as not being part of the official track – respectively, of the official pit lane – and that Appellant, despite being well aware of this fact, deliberately entered into this part of the Circuit. The intentionality of Appellant's action is not really contested and is convincingly demonstrated

by the video evidence filed by Respondent, in which it is clearly visible how Mr. Mahias had to cross a line of orange and white cones in order to enter the secondary entry.

84. Against this background, the Sole Arbitrator holds that the conduct exhibited by Appellant represents a manifest violation of Article 1.21.18 of the FIM Regulations, which – as any other infringement of the FIM Regulations – shall be subject to the sanctions laid down in Article 3.1 *et seq.* of the FIM Regulations.
85. Having considered all the circumstances of the present case, the Sole Arbitrator finds that a fine in the amount of EUR 1'000 is the most appropriate sanction to be imposed against Mr. Mahias. In the Sole Arbitrator's view, such penalty reflects a reasonable balance between, on the one side, the fact that the infraction committed by Appellant is of minor nature as it happened after the end of a race and did not affect an on-going competition nor it put others at immediate risk, and, on the other side, the idea that in a hazardous and hectic discipline such as motorcycle road racing it can and should not be tolerated that participants intentionally disregard signals or instructions given by officials.

***e. Conclusion***

86. In summary, the Sole Arbitrator considers that:
- a. Respondent did not manage to prove that Appellant was “not actively competing” at the moment in which the red flag was displayed;
  - b. Contrary to Appellant's argument, the display of the red flag – respectively, the consequent interruption of the Race – does not lead to a generalized inapplicability of all provisions encompassed by Article 1.21 of the FIM Regulations;
  - c. Appellant could and should have not been sanctioned for a violation of Article 1.21.3 of the FIM Regulations, as the latter provision is not applicable to the circumstances of the present case, but rather for an infringement of Article 1.21.18 of the FIM Regulations.
87. In light of the above, the Sole Arbitrators finds that the Appealed Decision shall be partially reformed so as to (i) ensure the inclusion of Mr. Mahias in the final ranking of the Race and (ii) order Mr. Mahias to pay a fine in the amount of EUR 1'000.
88. This conclusion makes it unnecessary for the Sole Arbitrator to consider the other arguments raised by the Parties nor to entertain any further requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules:**

1. The Appeal filed by Lucas Mahias on 21 September 2018 against the decision rendered on 16 September 2018 by the Stewards of the Fédération Internationale de Motocyclisme is partially upheld.
2. The decision of the Stewards of the Fédération Internationale de Motocyclisme rendered on 16 September 2018 is partially reformed as follows:
  - a. Lucas Mahias is ordered to pay to the Fédération Internationale de Motocyclisme a fine of the amount of EUR 1'000.
  - b. The decision to consider Lucas Mahias as not being classified is set aside and Lucas Mahias is declared to have been classified in Round 10 (Nolan Portuguese Round) of the 2018 Supersport FIM World Championship and to have won this FIM event.
  - c. The final ranking of Round 10 (Nolan Portuguese Round) of the 2018 Supersport FIM World Championship is hereby amended, attributing to Lucas Mahias the first place and the respective 25 points in the 2018 Supersport FIM World Championship Standings.
- (...)
5. All other or further claims and counterclaims are dismissed.