

DECISION OF THE MOTOGP COURT OF APPEAL

on the stay of execution

Sitting in the following composition:

Mr Sakari VUORENSOLA (Chairman)
Mr Robert HOFSTETTER
Mr Marek MALECKI

in the case:

- Championship:** *2023 FIM Grand Prix World Championship - MotoGP*
- Event:** *First round of the 2023 season of the FIM Grand Prix World Championship – MotoGP™, held on 24 - 26 March 2023 in Portugal (MotoGP™ Race of the Grande Premio Tissot de Portugal)*
- Appellants:** *Mr Marc Marquez, rider #93 of the MotoGP™ class, and his team HRC - Repsol Honda Team*
- Case concerns:** *Appeal before the FIM Appeal Stewards against the Notice of Application of the Sanction issued by the FIM MotoGP Stewards Panel on 28 March 2023 in connection with the previous Notification of Sanction issued by the same FIM MotoGP Stewards Panel on 26 March 2023*
- The Notice of Application of the Sanction clarified the application of the Notification of Sanction which imposed a Double Long Lap Penalty on Mr Marc Marquez*
- The appeal was referred by the FIM Appeal Stewards on 29 March 2023 to the MotoGP Court of Appeal pursuant to Article 3.3.3.2 of the FIM Grand Prix World Championship Regulations*

I. JURISDICTION

1. Pursuant to Article 3.3.5.3 of the FIM Grand Prix World Championship Regulations (hereinafter referred to as “the Regulations”; all references to Articles in this Decision are references to the Regulations unless otherwise indicated), the MotoGP Court of Appeal adjudicates upon request of the FIM Appeal Stewards.
2. This case was referred to the MotoGP Court of Appeal on 29 March 2023 by decision of the FIM Appeal Stewards in accordance with Article 3.3.3.2.
3. On 29 March 2023, by virtue of Article 3.3.5.1, the FIM Legal Director appointed the judges constituting the MotoGP Court of Appeal for this case. No objections were raised with regard to the composition of the MotoGP Court of Appeal (hereinafter also referred to as “the Court”) pursuant to Article 3.3.5.2.

II. FACTUAL BACKGROUND

4. On 26 March 2023, the FIM MotoGP Stewards Panel decided to impose a Double Long Lap Penalty (hereinafter also referred to as “the Original Sanction”) on Mr Marc Marquez, rider # 93 (hereinafter also referred to as “the Rider”) for the infringement of Article 1.21.2 (irresponsible riding causing danger).
5. On the same date, the Original Sanction was notified to the Rider at 15:13 directly at the event venue by the **Notification of sanction** (hereinafter “the Notification of Sanction”). The wording of the Notification of Sanction indicated that the Original Sanction was to be executed at the next MotoGP Race, i.e. the “Gran Premio Michelin® de la República Argentina” (hereinafter referred to as “the MotoGP race in Argentina”).
6. The Rider did not lodge an appeal against the Original Sanction.
7. On 26 March 2023, the Rider underwent surgery and ultimately decided not to participate and compete in the MotoGP Race in Argentina.
8. On 28 March 2023, the same FIM MotoGP Stewards Panel issued a notification called “**Application of the sanction imposed on Marc Marquez, Rider #93, by the FIM Stewards Panel**” (hereinafter referred to as “the Application of the Sanction”).

9. The wording of the Application of the Sanction pronounced on 28 March by the FIM MotoGP™ Stewards Panel following its above-mentioned decision of 26 March 2023, read as follows: “*The FIM MotoGP™ Stewards Panel hereby clarifies its decision as regards applicability. Considering the injury and non-participation of Marc Marquez, Rider #93, at the GRAN PREMIO MICHELIN® DE LA REPÚBLICA DE ARGENTINA, and with a view to comply with the intention underlying the decision taken by the FIM MotoGP™ Stewards Panel, the Double Long Lap Penalty shall be served by the Rider at the next MotoGP™ Race in which he will be able to participate.*”
10. On 29 March 2023 the Rider and his team (HRC - Repsol Honda Team) (hereinafter referred to as “the Appellants”) filed an appeal against the Application of the Sanction before the FIM Appeal Stewards and submitted a statement of appeal along with four (4) Annexes (hereinafter altogether referred to as “the Statement of Appeal”).
11. In the Statement of Appeal, the Appellants requested, in addition to the appeal on the merits of the case, a provisional stay of the execution of the Application of the Sanction until a final and definitive decision on the appeal is issued.
12. The FIM Appeal Stewards, on the same day (i.e. 29 March 2023), considering the circumstances of the case and the legal issues raised in the Statement of Appeal, decided, pursuant to Article 3.3.3.2, to refer the case to the MotoGP Court of Appeal to rule on the case.
13. The Court issued its Procedural Order N° 1 on 4 April 2023 and requested, *inter alia*, the Appellants to submit justifications for the request for the stay of execution by 6 April 2023. The Appellants submitted such justifications within the deadline prescribed.

III. SUBMISSIONS OF THE APPELLANTS

14. The Appellants request, in accordance with Article 3.4.5, that the Court provisionally stay the execution of the Application of the Sanction until a final and definitive determination on the Appeal is issued.
15. In support of the request for the provisional stay, the Appellants submit that a *prima facie* analysis of the merits of the case shows that there is a reasonable chance of success for the appeal (‘likelihood of success test’). Furthermore, the Appellants submit that the stay of execution is useful and indispensable for protecting the rights of the Rider from irreparable harm in the 2023 Grand Prix World Championship, and finally that the interest of the Rider as to the irreparable harm outweighs the interest of the FIM in this case.
16. As regards the chance of success, the Appellants argue that by the Application of the Sanction the FIM MotoGP Stewards Panel unilaterally and *ex post facto* amends the Original Sanction imposed on 26 March 2023. This infringes the

right of the Rider to a due process as well as the principle of legal certainty, since the Original Sanction was not appealed and, therefore, became final.

17. As regards the irreparable harm for the Rider, the Appellants argue that if the Rider had to complete the two Long Lap Penalties in the following MotoGP Race in which he will be able to compete, this would inevitably and irremediably have a direct impact on the Rider's timing and championship standing in said race as well as the Team's and Rider's position in the 2023 Grand Prix World Championship.
18. In accordance with the Appellants' reasoning, such irreparable harm for the Rider and the Team outweighs the interest of the FIM in maintaining the *statu quo*.

IV. ASSESSMENTS BY THE COURT

19. This Court considers that it may, in accordance with Article 3.4.5, decide by injunction on the provisional stay of the execution of the Application of the Sanction, if it is established that such stay is justified, *prima facie*, in fact and in law (*fumus boni juris*) and that the interests of the Rider and those of the Team, in order to avoid irreparable harm, outweighs the interest of maintaining the *statu quo*.

Reasonable chance of success (*prima facie*)

20. As regards the condition relating to the establishment of a *prima facie* case, the Court is satisfied if at least one of the justifications relied on by the Appellants in support of the claims on the merits of the case does not appear, *prima facie*, unfounded. This is the case, *inter alia*, where one of the justifications reveals the existence of complex legal issues for which a solution is not immediately obvious.
21. In the present case, the Court notes that already the FIM Appeal Stewards, in their decision dated 29 March 2023, have considered the circumstances of the case as well as the legal issues raised by the Appellants as valid reasons justifying their decision to refer the case to the MotoGP Court of Appeal. This is an indication revealing the complexity of the legal issues for which no immediate and obvious solution was available for the resolution of the case at hand.
22. To establish the existence of a *prima facie* chance of success, the Appellants rely on the fact that the Original Sanction was not appealed and, therefore, became final (*res judicata*). Thereafter, the Original Sanction shall no longer be challenged by the Rider nor revised or modified by the FIM MotoGP Stewards Panel. Therefore, the "clarification" of the Original Sanction (i.e. the Application of the Sanction) infringes the principle of legal certainty because it modifies the Original Sanction.

23. In the light of the foregoing considerations, it must be concluded that the requirement that a *prima facie* case be established has been satisfied in this case.

Irreparable harm

24. As regards the condition relating to the establishment of the interests of the Appellants to avoid irreparable harm, the Court considers that it is for the Appellants to prove that they cannot wait for the outcome of the main proceedings without suffering damage of serious and irreparable nature. To establish the existence of serious and irreparable damage, it is not necessary for the occurrence of the damage to be demonstrated with absolute certainty. It is sufficient that it be foreseeable with a sufficient degree of probability.

25. In the present case the Court notes the Appellants' assertion that the consequence of completing the Double Long Lap Penalty in the next MotoGP Race would impact the Rider's ability, for example, to outrun other riders and thus his position in the race standings. Such consequences cannot be undone if the Court subsequently rules on the merits of the case in favour of the Appellants.

26. Therefore, it must be concluded that the requirement that a serious and irreparable harm be established has been satisfied in the present case.

Balance of interests

27. As regards the weighing up of the interests and risks attached to each of the possible solutions, the Court considers that this involves examining whether the interests of the Appellants in the stay of execution of the Application of the Sanction outweighs the interest of maintaining the *statu quo*.

28. In the present case, the Court notes that should it, later in the main proceedings on the merits of the case, decide to reject the appeal of the Appellants, it still has an option to order the Rider to serve the Double Long Lap Penalty in any of the forthcoming MotoGP Races throughout the 2023 season.

29. Furthermore, the Court is also aware of the fact that Article 1.19.2 foresees an alternative solution for cases where a Long Lap Penalty cannot be carried out before the end of the race or where the race is interrupted prior to the completion of the Long Lap Penalty. In such cases, an equivalent time penalty will be inflicted to the rider concerned. The Court could use this provision of the Regulations by analogy and, thereby, provide an alternative solution for this case.

30. In those circumstances, it must be concluded that the balance of interests leans in favour of granting the stay of execution as requested by the Appellants.

**On these grounds,
The MotoGP Court of Appeal rules that:**

The execution of the FIM MotoGP Stewards Panel Notification of 28 March 2023 related to the Application of the Sanction imposed on Mr Marc Marquez issued in connection with the previous Notification of Sanction by the same FIM MotoGP Stewards Panel of 26 March 2023 is ordered to stay until the appeal submitted by Mr Marc Marquez and the HRC - Repsol Honda Team is finally resolved.

Pronounced on 12 April 2023

On behalf of
MotoGP Court of Appeal

[Signed]

Sakari Vuorensola
Chairman