

4A\_628/2009<sup>1</sup>

Judgement of February 17, 2010

The Presiding Judge of the First Civil Law Court

Federal Judge KLETT (Mrs), presiding,  
Clerk of the Court: M. CARRUZZO.

X.\_\_\_\_\_,  
Appellant,

*v.*

Y.\_\_\_\_\_,  
Respondent,  
Represented by Mr Philippe VERBIEST

The Presiding Judge of the First Civil Law Court considers in fact and in law:

1.

In a decision no. 7 of December 8, 2008, Y.\_\_\_\_\_'s Appeal Commission, a Romanian public entity specialised in the fight against doping, confirmed the decision of October 3, 2008, in which Y.\_\_\_\_\_'s Sanctions Committee had sentenced X \_\_\_\_\_, a Romanian athlete at an international level, to a two year suspension commencing on May 29, 2008, for violating anti-doping rules.

X.\_\_\_\_\_'s appeal was rejected by the Court of Arbitration for Sport (CAS) in its decision of October 9, 2009.

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<sup>1</sup> Translator's note: Quote as X.\_\_\_\_\_*v.* Y. \_\_\_\_\_, 4A\_628/2009. The original of the decision is in French. The text is available on the website of the Federal Tribunal [www.bger.ch](http://www.bger.ch).

On November 18, 2009, X \_\_\_\_\_ filed a Civil law appeal with the Federal Tribunal against the award, implicitly submitting that the award be annulled.

The Respondent and the CAS were not asked to file a response.

2.

The Appellant received a complete copy of the decision by fax dated October 13, 2009. She filed her appeal more than 30 days after receipt of the copy. The aforementioned appeal would therefore not be capable acceptable due to lack of timely filing, which is non-extendable according to Art. 100 (1) LTF<sup>2</sup>, assuming that communication by fax is sufficient to initiate the countdown of the time limit (in this regard see KAUFMANN\_KOHLER/RIGOZZI, Arbitrage international 2006, no 733, in which the authors quote a precedent – decision 4P.88/2006 of July 10, 2006, at 2.3. – which, however, does not settle the issue. However, it is not necessary to examine this problem, as the matter is in any case not capable of appeal for another reason.

3.

An appeal may only be filed on the basis of one of the grievances exhaustively listed in Art. 190 (2) PILA<sup>3</sup> (ATF 128 III 50 at 1a p. 53; 127 III 279 at 1a p. 282; 119 II 380 at 3c p. 383). The Federal Tribunal examines only the grievances raised and substantiated by the Appellant. (Art. 77 (3) LTF).

In this case, the Appellant does not invoke any of the grounds stated in Art. 190 (2) PILA. She merely questions the facts established by the CAS, which is not admissible under Art. 105 (1) LTF.

This being the case, the simplified procedure of Art. 108 (1) LTF, should be applied.

4.

Given the circumstances, no costs shall be levied (Art. 66 (1) LTF).

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<sup>2</sup> Translator's note: LTF is the French abbreviation for the Federal Statute of June 17, 2005 organising the Federal Tribunal, RS 173.110.

<sup>3</sup> Translator's note: PILA is the most commonly used English abbreviation for the Federal Statute on International Private Law of December 18, 1987, RS 291.

Therefore, the Presiding Judge of the First Civil Law Court pronounces:

1. The matter is not capable of appeal.
2. No costs are levied.
3. This decision shall be notified to the Parties and the Court of Arbitration for Sport (CAS).

Lausanne, February 17, 2010

In the name of the First Civil Law Court of the Swiss Federal Tribunal.

The Presiding Judge:

The Clerk:

KLETT

CARRUZZO