

4A\_420/2010<sup>1</sup>

Judgment of January 3, 2011

First Civil Law Court

Federal Judge KLETT (Mrs), Presiding

Federal Judge CORBOZ,

Federal Judge KOLLY,

Clerk of the Court: M. CARRUZZO

Alejandro Valverde Belmonte

Appellant,

Represented by Mr. Sébastien Besson

v.

1. World Anti-Doping Agency (WADA)

Represented by Mr. François Kaiser and Mr. Yvan Henzer.

2. International Cyclist Union (ICU)

Represented by Mr. Philippe Verbiest

3. Real Federación Española de Ciclismo (RFEC)

Represented by Mr. Jorge Ibarrola

Respondents,

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<sup>1</sup> Translator's note :

Quote as Alejandro Valverde Belmonte v. AMA, UCI and RFEC, 4A\_420/2010. 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).

Facts:

A.

In May 2004 a criminal investigation for doping was opened in Spain ("Operation Puerto"). Two years later it led to the arrest of Dr. Fuentes and other people. They were accused of violating Spanish laws on public health.

On August 29, 2007 the International Cycling Union (ICU) which had joined the criminal proceedings next to the World Anti-Doping Agency (WADA) asked the Spanish Cycling Federation, Real Federación Española de Ciclismo (RFEC) to initiate disciplinary proceedings against Alejandro Valverde Belmonte, a professional racing cyclist of Spanish citizenship. To justify its request it relied on the fact that on May 6, 2006 investigators acting in the framework of Operation Puerto had seized a pack containing blood allegedly belonging to that racing cyclist in Dr. Fuentes' laboratory (hereafter: pack nr. 18).

On September 7, 2007 the Comité Nacional de Competición y Disciplina Deportiva (CNCDD), the competent body for doping matters within RFEC, refused to open disciplinary proceedings against Alejandro Valverde Belmonte. The President of RFEC took a decision identical to that of the CNCDD on the same day.

B.

On October 2007, WADA and ICU filed an appeal with the CAS against the decisions taken by CNCDD and by the President of the RFEC on September 7, 2007. In their last submissions on the merits both asked that Alejandro Valverde Belmonte be banned for two years and that all his results since May 4, 2004 should be annulled.

The racing cyclist submitted that the matters were not capable of appeal and the RFEC that they should be rejected.

A Panel composed of Mr. Otto L.O De Witt Wijnen, attorney at Bergambacht (Netherlands) (Chairman), Prof. Richard H. McLaren of London (Canada) (arbitrator appointed by the Appellants) and of the Spanish law professor Dr. Miguel Angel Fernandez Ballesteros (arbitrator appointed by the Respondents) was constituted on January 28, 2008 (hereafter: the Panel).

After investigating the merits of the case the Panel issued a majority award on May 31, 2010 partially admitting the appeals and holding Alejandro Valverde Belmonte guilty of a violation of Art. 15.2 of the ICU Anti-Doping Rules (2004 version) and banning him for two years from January 1<sup>st</sup>, 2010. Moreover

it rejected the requests by the ICU and WADA seeking the annulment of the results obtained in competitions by the Spanish racing cyclist before January 1<sup>st</sup>, 2010.

C.

On June 29, 2010 Alejandro Valverde Belmonte filed a Civil law appeal with the Federal Tribunal with a view to obtaining the annulment of the May 31, 2010 award and seeking a finding that the CAS had no jurisdiction on the merits.

D.

On June 29, 2010 too the Appellant filed a request for interpretation and correction of the May 31, 2010 award with the CAS. On July 9, 2010 the Deputy of the President of the Appeals Arbitration Division of the CAS refused to address the merits of the request.

The Appellant also filed a Civil law appeal with the Federal Tribunal against the aforesaid decision on July 28, 2010 (Case 4A\_420/2010). He requested that the case be joined with case 4A\_386/2010. The Presiding Judge rejected the request on October 4, 2010 as well as the CAS request of September 17 and 20, 2010 seeking a stay in case 4A\_420/2010 until a decision on the merits in case 4A\_386/2010.

In their respective answers, WADA, ICU and the CAS all submit that the appeal should be rejected. The RFEC did not submit an answer within the time limit it had been given.

Reasons:

1.

According to Art. 54 (LTF)<sup>2</sup> the Federal Tribunal issues its decision in an official language<sup>3</sup>, as a rule in the language of the decision under appeal. When that decision is in another language (in this case English) the Federal Tribunal resorts to the official language chosen by the parties. In front of the CAS they used English. In the brief sent to the Federal Tribunal the Appellant used French. According to its practice the Federal Tribunal will resort to the language of the appeal and consequently issue its decision in French.

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<sup>2</sup> Translator's note : LTF is the French abbreviation for the Federal Statute of June 17, 2005 organizing the Federal Tribunal, RS 173 110.

<sup>3</sup> Translator's note : The official languages of Switzerland are German, French and Italian.

2.

The issue as to whether or not the decision challenged was capable of a Civil law appeal to the Federal Tribunal needs not be decided as in any event the matter is not capable of appeal for the following reasons.

3.

The admissibility of a Civil law appeal requires among other conditions that the Appellant should have a legally protected interest to the annulment or the modification of the decision under appeal (Art. 76 (1) (b) LTF).

In his appeal seeking the annulment of a decision refusing to address the merits of his request for interpretation the Spanish racing cyclist really seeks to obtain an interpretation and, as the case may be, a rectification by the Panel of the award issued on May 31, 2010. He emphasizes in this respect that his appeal raises the same issue, yet under different perspective, as that which he raised in this respect in his appeal against the aforesaid award (July 28, 2010 brief at 62). Yet in the judgment issued today as to that other appeal, the specific language of which (*i.e.* the language at 8.3.2) is deemed to be reproduced here *in extenso*, the Federal Tribunal, after reviewing the Appellant's argument, reached the conclusion that the award itself did not at all contradict the reasons of the award.

Consequently the Appellant may no longer claim a present and legally protected interest to obtain the annulment of the decision refusing to address the substance of a request for interpretation of which it was moreover held that it would be bound to fail anyway because the alleged incoherence between the reasons and the award did not exist.

Consequently the matter is not capable of appeal.

4.

The Appellant shall pay the judicial costs (Art. 66 (1) LTF) and compensate WADA and the ICU for the federal judicial proceedings (Art. 68 (1) and (2) LTF). The RFEC did not file an answer and is not entitled to compensation.

Therefor the Federal Tribunal pronounces:

1. The matter is not capable of appeal.
2. The judicial costs set at CHF 2'000.- shall be borne by the Appellant.

3. The Appellant shall pay to the World Anti-Doping Agency (WADA) an amount of CHF 2'500.- for the federal judicial proceedings. He shall pay the same amount to the International Cyclist Union (ICU) for the same reason.
  
4. This judgment shall be notified to the representatives of the Parties and to the Court of Arbitration for Sport (CAS).

Lausanne, January 3, 2011

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

The Presiding Judge:

The Clerk:

KLETT (Mrs)

CARRUZZO