JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
30 September 2004 *

In Case T-313/02,

David Meca-Medina, residing at Barcelona (Spain),

Igor Majcen, residing at Ljubljana (Slovenia),

represented by J.-L. Dupont, lawyer,

applicants,

v

Commission of the European Communities, represented by O. Beynet and A. Bouquet, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

supported by

Republic of Finland, represented by T. Pynnä, acting as Agent, with an address for service in Luxembourg,

APPLICATION for the annulment of the Commission's decision of 1 August 2002 rejecting the complaint lodged by the applicants against the International Olympic Committee (IOC) seeking a declaration that certain rules adopted by the latter and implemented by the Fédération internationale de natation (FINA) and certain practices relating to doping control are incompatible with the Community rules on competition and freedom to provide services (Case COMP/38158 — Meca-Medina and Majcen/IOC),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: H. Legal, President, V. Tiili and M. Vilaras, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 21 April 2004,

gives the following

Judgment

Legal and factual background

1 The International Olympic Committee ('the IOC') is the supreme authority of the Olympic Movement, which brings together the various international sporting federations, among which is the Fédération internationale de natation (International Swimming Federation, hereinafter 'FINA').

2 FINA implements for swimming, by its Doping Control Rules ('the DCR', cited here in the version in force at the material time), the Olympic Movement's Anti-Doping Code. DCR 1.2(a) states that the offence of doping 'occurs when a banned substance is found to be present within a competitor's body tissue or fluids'. That definition corresponds to that in Article 2(2) of the abovementioned Anti-Doping Code, where doping is defined as the presence in an athlete's body of a prohibited substance or the finding that such a substance or a prohibited technique has been used.

3 Nandrolone and its metabolites, Norandrosterone (NA) and Norethiocholanolone (NE) (hereinafter together called 'Nandrolone'), are prohibited anabolic substances. However, according to the practice of the 27 laboratories accredited by the IOC and FINA, and to take account of the possibility of endogenous, therefore innocent, production of Nandrolone, the presence of that substance in a male athlete's body is defined as doping only if it exceeds a limit of 2 nanogrammes (ng) per millilitre (ml) of urine.

4 For a first offence of doping with an anabolic substance, DCR 9.2(a) requires the suspension of the athlete for a minimum of four years, which may however be reduced, under the final sentence of DCR 9.2, DCR 9.3 and DCR 9.10, if the athlete proves that he did not knowingly take the prohibited substance or establishes how that substance could be present in his body without negligence on his part.

5 The penalties are imposed by FINA's Doping Panel, whose decisions are subject to appeal to the Court of Arbitration for Sport ('the CAS') under DCR 8.9. The CAS, which is based in Lausanne, is financed and administered by an organisation independent of the IOC, the International Council of Arbitration for Sport ('the ICAS').

6 The CAS's rulings are subject to appeal to the Swiss Federal Court, which has jurisdiction to review international arbitration awards made in Switzerland.

7 The applicants are two professional athletes who compete in long-distance swimming, the aquatic equivalent of the marathon.

8 In an anti-doping test carried out on 31 January 1999 during the World Cup in that discipline at Salvador de Bahia (Brazil), where they had finished first and second respectively, the applicants tested positive for Nandrolone. The level found for Mr D. Meca-Medina was 9.7 ng/ml and that for Mr I. Majcen 3.9 ng/ml.

9 On 8 August 1999, FINA's Doping Panel suspended the applicants for a period of four years.

10 On the applicants' appeal, the CAS, by arbitration award of 29 February 2000, confirmed the suspension.

11 In January 2000, certain scientific experiments showed that Nandrolone's metabolites can be produced endogenously by the human body at a level which may exceed the accepted limit when certain foods, such as boar meat, have been consumed.

12 In view of that development, FINA and the applicants consented, by an arbitration agreement of 20 April 2000, to refer the case anew to the CAS for reconsideration.

13 By arbitration award of 23 May 2001, the CAS reduced the penalty to two years' suspension.

14 The applicants did not appeal against that award to the Swiss Federal Court.

15 By letter of 30 May 2001, the applicants filed a complaint with the Commission, under Article 3 of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962, p. 87), alleging a breach of Article 81 EC and/or Article 82 EC.

16 In their complaint, the applicants challenged the compatibility of certain regulations adopted by the IOC and implemented by FINA and certain practices relating to doping control with the Community rules on competition and freedom to provide services. First of all, the fixing of the limit at 2 ng/ml is a concerted practice between the IOC and the 27 laboratories accredited by it. That limit is scientifically unfounded and can lead to the exclusion of innocent or merely negligent athletes. In the applicants' case, the excesses could have been the result of the consumption of a meal containing boar meat. Also, the IOC's adoption of a mechanism of strict liability and the establishment of tribunals responsible for the settlement of sports disputes by arbitration (the CAS and the ICAS) which are insufficiently independent of the IOC strengthens the anti-competitive nature of that limit.

17 According to that complaint, the application of those rules (hereinafter 'the anti-doping rules at issue') leads to the infringement of the athletes' economic freedoms, guaranteed inter alia by Article 49 EC and, from the point of view of competition law, to the infringement of the rights which the athletes can assert under Articles 81 EC and 82 EC.

18 By letter of 8 March 2002, the Commission informed the applicants, in accordance with Article 6 of Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles [81] and [82] of the EC Treaty (OJ 1998 L 354, p. 18), of the reasons for which it considered that the complaint should not be upheld.

19 By letter of 11 April 2002, the applicants sent the Commission their observations on the letter of 8 March 2002.

20 By decision of 1 August 2002 ('the disputed decision'), the Commission, after analysing the anti-doping rules at issue according to the assessment criteria of competition law and concluding that those rules did not fall foul of the prohibition under Articles 81 EC and 82 EC, rejected the applicants' complaint (paragraphs 33 to 70 of the disputed decision).

Procedure and forms of order sought by the parties

21 By application lodged at the Registry of the Court of First Instance on 11 October 2002, the applicants brought this action.

22 By a separate document of equal date, the applicants applied for adjudication by the expedited procedure under Article 76a of the Rules of Procedure of the Court of First Instance. That application, which the Commission opposed in its observations lodged at the Court Registry on 25 October 2002, was rejected by the Court of First Instance.

23 By document lodged at the Court Registry on 24 January 2003, the Republic of Finland sought leave to intervene in support of the Commission. By order of 25 February 2003, the President of the Fourth Chamber of the Court of First Instance allowed that intervention. The intervener lodged its statement in intervention on 7 April 2003.

24 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure.

25 The applicants and the defendant appeared at the hearing on 21 April 2004 and presented their arguments and their replies to the Court's questions. The intervener did not appear at the hearing, which was formally noted in the minutes of the hearing.

26 The applicants claim that the Court should annul the disputed decision.

27 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

28 The Republic of Finland submits that the Court should dismiss the action.

Law

Arguments of the parties

29 The applicants raise three pleas in law in support of their application.

30 According to the first plea in law, the Commission made a manifest error of assessment in fact and in law, by deciding that the IOC is not an undertaking within the meaning of the Community case-law.

31 According to the second plea in law, the Commission made a manifest error of assessment in fact and in law, by deciding that the limitation of the athletes' liberty resulting from the anti-doping rules at issue is not a restriction of competition within the meaning of Article 81 EC, on the ground that such a limitation is inherent in the organisation and proper conduct of sporting competition and does not go beyond what is necessary to attain the objective of the campaign against doping. The Commission wrongly applied the criteria established in the judgment in Case C-309/99 *Wouters and Others* [2002] ECR I-1577.

32 According to the third plea in law, the Commission made a manifest error of assessment in fact and in law, by stating, in recital 71 of the preamble to the disputed decision, as follows: 'The complaint does not contain details that could lead to the conclusion that a Member State or an associated State had infringed Article 49 EC. Indeed, there is no evidence of the responsibility of any authority of a Member State for the adoption of measures which could prove to be contrary to the principle of the free movement of services.'

33 The Commission, after submitting, as a preliminary point, that the action is manifestly unfounded, since it seeks to challenge, for reasons based artificially on the law of competition, a sporting penalty and scientific criteria established for the campaign against doping, proceeds, in the course of refuting the three pleas in law for annulment, to justify the analysis made in the disputed decision. First, the Commission argues that, in paragraph 37 of the disputed decision, it stated that the IOC can be treated as an undertaking and it added that, as part of the Olympic Movement, the IOC can be treated as an association of national and international associations of undertakings. Secondly, the Commission correctly concluded, in paragraphs 55, 70 and 72 of the disputed decision, that the anti-doping rules at issue

do not fall foul of the prohibition in Article 81(1) EC and Article 82 EC and it did not fail to apply the criteria established in the *Wouters* judgment. Finally, the Commission correctly rejected the complaint in so far as it concerned an infringement of Article 49 EC, since it contained no evidence to justify the conclusion that there could have been such an infringement by a Member State or by an associated State (paragraph 71 of the disputed decision).

34 The Republic of Finland argues, for its part, that sport can be considered from two aspects: there is, on the one hand, sporting activity properly so called, which plays a social, unifying and cultural role, and on the other hand economic activity which attaches itself to sport. The Court of Justice has confirmed that sport is subject to Community law only in so far as it is an economic activity within the meaning of Article 2 EC (Case 36/74 *Walrave and Koch* [1974] ECR 1405 ('*Walrave*'), paragraph 8; Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 73; and Joined Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, paragraph 41). Thus, sporting activity properly so called and the rules inherent in that activity, among which are the anti-doping rules, fall outside the scope of Community competition law. For that reason, the Court of First Instance cannot uphold this action without weakening the international system of the campaign against doping, which will, in turn, weaken the values which the organisation of sport is intended to promote.

Findings of the Court

35 This application, which seeks the annulment of a decision rejecting a complaint following a proceeding pursuant to Articles 81 EC and 82 EC, raises, in essence, the question whether anti-doping rules can be challenged under Article 49 EC on the freedom to provide services, and what consequences are to be drawn as regards Community competition law.

36 In order to reply to that question, on which the outcome of the action depends, and to the pleas in law and arguments of the parties, it is necessary to define the nature and content of the anti-doping rules at issue in the light of the Court of Justice's case-law on the application to sporting regulations of the provisions of the EC Treaty on economic freedoms, in particular the provisions which apply to the free movement of workers, the freedom to provide services and competition.

The application to sporting regulations of the EC Treaty provisions on economic freedoms

37 It should be noted as a preliminary point that, according to the Court's settled case-law, having regard to the objectives of the Community, sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 EC (*Walrave*, paragraph 4; Case 13/76 *Donà* [1976] ECR 1333, paragraph 12; *Bosman*, paragraph 73; *Deliège*, paragraph 41; and Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681 ('*Lehtonen*'), paragraph 32). The Court has also recognised that sporting activities are of considerable social importance in the Community (*Bosman*, paragraph 106, and *Deliège*, paragraph 41).

38 That is also borne out by Declaration on Sport No 29, annexed to the final act of the Conference which adopted the text of the Amsterdam Treaty, which emphasises the social significance of sport and calls on the bodies of the European Union to give special consideration to the particular characteristics of amateur sport. In particular, that declaration is consistent with the abovementioned case-law in so far as it relates to situations in which sport constitutes an economic activity (*Deliège*, paragraph 42).

39 Where a sporting activity takes the form of paid employment or a provision of remunerated service, it falls, more particularly, within the scope of Article 39 EC et seq. or of Article 49 EC et seq., respectively (*Walrave*, paragraph 5; *Donà*, paragraphs 12 and 13; and *Bosman*, paragraph 73).

40 Therefore, according to the Court, the prohibitions laid down by those provisions of the Treaty apply to the rules adopted in the field of sport which concern the economic aspect which sporting activity can present. In that context, the Court has held that the rules providing for the payment of fees for the transfer of professional players between clubs (transfer clauses) or limiting the number of professional players who are nationals of other Member States which those clubs may field in matches (rules on the composition of club teams), or fixing, without objective reasons concerning only the sport or justified by differences in the circumstances between players, different transfer deadlines for players coming from other Member States (clauses on transfer deadlines) fall within the scope of those provisions of the Treaty and are subject to the prohibitions which they enact (see, respectively, *Bosman*, paragraphs 114 and 137; *Lehtonen*, paragraph 60; and Case C-438/00 *Deutscher Handballbund* [2003] ECR I-4135 ('*Kolpak*'), paragraphs 56 to 58).

41 On the other hand, the prohibitions enacted by those provisions of the Treaty do not affect purely sporting rules, that is to say rules concerning questions of purely sporting interest and, as such, having nothing to do with economic activity (*Walrave*, paragraph 8). In fact, such regulations, which relate to the particular nature and context of sporting events, are inherent in the organisation and proper conduct of sporting competition and cannot be regarded as constituting a restriction on the Community rules on the freedom of movement of workers and the freedom to provide services. In that context, it has been held that the rules on the composition of national teams (*Walrave*, paragraph 8, and *Donà*, paragraph 14), or the rules relating to the selection by sports federations of those of their members who may participate in high-level international competitions (*Deliège*, paragraph 64) constitute purely sporting rules which therefore, by their nature, fall outside the

scope of Articles 39 EC and 49 EC. Also among such rules are 'the rules of the game' in the strict sense, such as, for example, the rules fixing the length of matches or the number of players on the field, given that sport can exist and be practised only in accordance with specific rules. That restriction on the scope of the above provisions of the Treaty must however remain limited to its proper objective (*Walrave*, paragraph 9; *Donà*, paragraph 15; *Bosman*, paragraphs 76 and 127; *Deliège*, paragraph 43; and *Lehtonen*, paragraph 34).

42 It must be observed that the Court has not, in the abovementioned judgments, had to rule on whether the sporting rules in question are subject to the Treaty provisions on competition (see, in that regard, *Bosman*, paragraph 138; *Deliège*, paragraphs 36 to 40; and *Lehtonen*, paragraph 28). However, the principles extracted from the case-law, as regards the application to sporting regulations of the Community provisions in respect of the freedom of movement of persons and services, are equally valid as regards the Treaty provisions relating to competition. The fact that purely sporting rules may have nothing to do with economic activity, with the result, according to the Court, that they do not fall within the scope of Articles 39 EC and 49 EC, means, also, that they have nothing to do with the economic relationships of competition, with the result that they also do not fall within the scope of Articles 81 EC and 82 EC. Conversely, rules which, although adopted in the field of sport, are not purely sporting but concern the economic activity which sport may represent fall within the scope of the provisions both of Articles 39 EC and 49 EC and of Articles 81 EC and 82 EC and are capable, in an appropriate case, of constituting an infringement of the liberties guaranteed by those provisions (see, in that regard, the Opinion of Advocate General Lenz in *Bosman* at I-4930, paragraphs 253 to 286, and particularly paragraphs 262, 277 and 278; the Opinion of Advocate General Cosmas in *Deliège* at I-2553, paragraphs 103 to 112; and the Opinion of Advocate General Alber in *Lehtonen* at I-2685, paragraphs 110 and 115) and of being the subject of a proceeding pursuant to Articles 81 EC and 82 EC.

43 It is in the light of those considerations that the nature of anti-doping rules and, in this case, the anti-doping rules at issue, must be defined.

The nature of the anti-doping rules at issue

44 It is appropriate to point out that, while it is true that high-level sport has become, to a great extent, an economic activity, the campaign against doping does not pursue any economic objective. It is intended to preserve, first, the spirit of fair play, without which sport, be it amateur or professional, is no longer sport. That purely social objective is sufficient to justify the campaign against doping. Secondly, since doping products are not without their negative physiological effects, that campaign is intended to safeguard the health of athletes. Thus, the prohibition of doping, as a particular expression of the requirement of fair play, forms part of the cardinal rule of sport.

45 It must also be made clear that sport is essentially a gratuitous and not an economic act, even when the athlete performs it in the course of professional sport. In other words, the prohibition of doping and anti-doping rules concern exclusively, even when the sporting action is performed by a professional, a non-economic aspect of that sporting action, which constitutes its very essence.

46 Those considerations are echoed in the Community support plan to combat doping in sport of 1 December 1999 (COM(1999) 643 final), according to which 'doping symbolises the contrast between sport and the values it has traditionally stood for', in the Commission's working paper of 29 September 1998 entitled 'Development of and prospects for Community action in sport', which states that 'sport plays a morally elevating role in society' through 'the values associated with fair play, solidarity, fair competition [and] team spirit' which it brings, and in the Report from the Commission to the European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework, of 10 December 1999 (COM(1999) 644 final, also called 'the Helsinki Report on Sport'), according to which 'the rules inherent to sport are, first and foremost, the "rules of the game"' and 'the aim of these rules is not to distort competition'.

47 In view of the foregoing, it must be held that the prohibition of doping is based on purely sporting considerations and therefore has nothing to do with any economic consideration. That means, in the light of the case-law and the considerations set out in paragraphs 37 to 42 above, that the rules to combat doping cannot, any more than the rules considered by the Court of Justice in *Walrave*, *Donà* and *Deliège*, come within the scope of the Treaty provisions on the economic freedoms and, in particular, of Articles 49 EC, 81 EC and 82 EC. The anti-doping rules are intimately linked to sport as such.

48 In the present case, the Court of First Instance considers that the same conclusion must apply as regards the anti-doping rules at issue.

49 First, it is a fact established by the contents of the case-file that the anti-doping rules at issue have no discriminatory aim. In particular, the applicants have not in any way alleged — quite the contrary — that the limit mentioned in paragraph 3 above is applied selectively to certain athletes or categories of athletes to exclude them from competitions. If there were such discrimination, the restriction of the scope of the Treaty provisions on economic freedoms, accepted by the Court in respect of purely sporting rules (*Walrave*, paragraph 9), could not, it is clear, apply with regard to the rules concerned. That restriction would not be limited to its proper object, which is the preservation 'of the noble competition and other ideals of sport' (Opinion of Advocate General Cosmas in *Deliège*, paragraphs 50 and 74). Such rules would thus not escape the Treaty provisions on economic freedoms and those freedoms might thereby be infringed, which is a matter for the Commission to establish and penalise by way of proceedings pursuant to Articles 81 EC and 82 EC, if the rules in question entail failure to comply with competition rules.

50 Secondly, the Court of First Instance considers that the arguments by which the applicants attempt to challenge in two different respects the purely sporting nature of the anti-doping rules at issue cannot be accepted.

51 First, the applicants submit that the anti-doping rules at issue infringe their economic freedoms because they have economic repercussions for them.

52 That argument, which is tantamount to a submission that rules cannot be purely sporting if they have economic repercussions, is at odds with the Court's case-law.

53 It is precisely because sporting rules have economic repercussions for professional sportsmen and sportswomen and because those rules are considered to be excessive by some of those professionals that the dispute arises and that the question is raised whether those rules are purely sporting in nature (like the rules which gave rise to *Walrave*, *Deliège* and *Donà*) or whether they cover the economic aspect of sporting activity (like the rules which gave rise to *Bosman*, *Lehtonen* and *Kolpak*).

54 Still as to the first aspect, the applicants argued, particularly at the hearing, that it is because of their allegedly excessive nature that the anti-doping rules at issue infringe the athletes' economic freedoms guaranteed by the Treaty. In other words, those rules, albeit non-discriminatory, have, because and in so far as they are excessive, become something other than anti-doping rules and, therefore, something other than purely sporting rules.

55 Those arguments cannot be accepted. It is common ground that the contested rules are, by their nature, anti-doping provisions. In particular, they have no discriminatory purpose. As a result, the allegedly excessive nature of those rules, were it to be established, would not result in them ceasing to be purely sporting rules, thereby making their lawfulness dependent on an assessment according to

economic criteria under competition law, provided that they remain limited to their proper object, which is the campaign against doping and the safeguarding of the spirit of fair play. Furthermore, the applicants themselves accept the legitimacy of that objective.

56 Secondly, the applicants state, in their application, that the anti-doping rules at issue were not motivated solely by altruistic and health considerations, but also by the IOC's own economic considerations and, in particular, by its concern (in principle legitimate) not to see the economic potential of the Olympic Games diminished by scandals linked to doping. In so far as that allegation is intended to suggest that the contested anti-doping rules are not purely sporting rules, it must be rejected.

57 The fact that the IOC might possibly have had in mind when adopting the anti-doping rules at issue the concern, legitimate according to the applicants themselves, of safeguarding the economic potential of the Olympic Games is not sufficient to alter the purely sporting nature of those rules.

58 Moreover, even were it proved, *quod non*, that the IOC acted exclusively on the basis of its purely economic interests, there is every reason to believe that it fixed the limit at the level best supported by the scientific evidence. The IOC's economic interest is to have the most scientifically exact anti-doping regulations, in order both to ensure the highest level of sporting competition, and therefore of media interest, and to avoid the scandals which the systematic exclusion of innocent athletes can provoke.

59 It follows that the applicants' argument that fixing a limit which is allegedly too low serves the economic interests of the IOC is neither sustainable nor convincing and must be rejected.

60 As regards the disputed decision, the Court considers that the Commission's conclusion, in recital 72 of that decision, that 'the rules and practices in question do not fall foul of the prohibition laid down in Articles 81 [EC] and 82 [EC]', is correct.

61 To reach that conclusion, the Commission, after stating in paragraph 40 of the disputed decision that in order to assess the compatibility of the anti-doping rules at issue with Article 81 EC it is necessary to determine whether, in the legal and economic context in which they are implemented, their object or effect is to restrict competition, noted first that those rules are not intended to restrict competition. They are, according to the Commission, instruments intended solely to combat doping, whose sole aim is to ensure the identification and punishment of athletes whose conduct contravenes the obligations to which they are subject regarding the use of prohibited substances and methods (paragraph 41 of the disputed decision). As regards the effects on competition, the Commission considered that the anti-doping rules at issue might restrict the athletes' freedom of action, but that such a limitation is not necessarily a restriction of competition within the meaning of Article 81 EC because it may be inherent in the organisation and proper conduct of sporting competition (paragraph 42 of the disputed decision). Later in the decision the Commission reached the conclusion, on the basis of an analysis founded on *Wouters*, that the anti-doping rules at issue are intimately linked to the proper conduct of sporting competition, that they are necessary to combat doping effectively and that the limitation of athletes' freedom of action does not go beyond what is necessary to attain that objective. Consequently, according to the Commission, they do not fall foul of the prohibition under Article 81 EC (paragraph 55 of the disputed decision).

62 At the hearing, in reply to a question from the Court, the Commission stated that the disputed decision is based on *Walrave*, *Donà* and *Deliège*, cited in paragraphs 37 and 41 above, and therefore on the purely sporting nature of the anti-doping rules at issue. It added that whilst it examined those rules, albeit purely sporting, under competition law and in accordance with the method of analysis derived from *Wouters*, it did so 'in the alternative' or more 'for the sake of completeness'. The

Commission wished, in particular, to satisfy itself that the rules were not discriminatory.

63 On the latter point, the Court notes that the complaint contained no allegation whatsoever that the anti-doping rules at issue were discriminatory. It was, on the contrary, common ground that they applied to all athletes. That agreed fact also underlies the disputed decision, which confines itself, at paragraph 50, to mentioning it.

64 On the more general question of the Commission's subjection, in the alternative or for the sake of completeness according to its own words, of the contested anti-doping rules to an analysis under competition law, the Court considers that such an examination was not necessary in fact since the rules are purely sporting, and in view of *Walrave*, *Donà* and *Deliège*.

65 It must also be pointed out that this case differs from that which gave rise to the *Wouters* judgment. The rules at issue in *Wouters* concerned market conduct — the establishment of networks between lawyers and accountants — and applied to an essentially economic activity, that of lawyers. By contrast, the rules at issue in this case concern conduct — doping — which cannot, without distorting the nature of sport, be likened to market conduct, and they apply to an activity, sport, which, in its very essence and as explained in paragraph 45 above, has nothing to do with any economic consideration.

66 The Court considers thus that the reference to the method of analysis in *Wouters* cannot, in any event, bring into question the conclusion adopted by the Commission in the disputed decision that the anti-doping rules at issue fall outside the scope of Articles 81 EC and 82 EC, since that conclusion is based, ultimately, on the finding that the rules are purely sporting rules.

67 The fact that they are purely sporting rules means that the applicants' opposition to them concerns rules of sport and the powers of the sporting dispute settlement bodies. In that regard, the Court notes that the applicants had avenues of appeal which they have not fully exploited. They did not appeal against the arbitration award of the CAS of 23 May 2001 to the Swiss Federal Court.

68 In the light of all the foregoing considerations, the Court finds that the three pleas for annulment put forward by the applicants in support of this application are irrelevant. The first two pleas, relating to manifest errors of assessment by the Commission by characterising the IOC as an undertaking and by applying the criteria in *Wouters*, are based on the erroneous premiss that the anti-doping rules at issue are subject to competition law. As regards the third plea, relating to a manifest error of assessment by the Commission in the application of Article 49 EC, it rests on the erroneous premiss that the anti-doping rules at issue come under that provision. Those pleas in law must therefore be rejected without the need to consider them further.

69 Consequently, the application must be dismissed as unfounded, without the need to allow the applicants' request to call two scientific experts as witnesses.

Costs

70 Under Article 87(2) of the Rules of Procedure, any unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs, as applied for by the defendant. In addition, under the first paragraph of Article 87(4) of those rules, Member States who have intervened in the action shall bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the applicants to bear their own costs and to pay the Commission's costs;**

3. **Orders that the Republic of Finland shall bear its own costs.**

Legal Tiili Vilaras

Delivered in open court in Luxembourg on 30 September 2004.

H. Jung H. Legal

Registrar President