

Case C-519/04 P

David Meca-Medina and Igor Majcen

v

Commission of the European Communities

(Appeal — Rules adopted by the International Olympic Committee concerning doping control — Incompatibility with the Community rules on competition and freedom to provide services — Complaint — Rejection)

Opinion of Advocate General Léger delivered on 23 March 2006 I - 6995

Judgment of the Court (Third Chamber), 18 July 2006 I - 7006

Summary of the Judgment

1. *Community law — Scope — Sport — Restriction to economic activities (Art. 2 EC)*

2. *Free movement of persons and services — Workers — Competition — Treaty provisions — Scope*
(Arts 39 EC, 49 EC, 81 EC and 82 EC)
3. *Competition — Agreements, decisions and concerted practices — Decisions of associations of undertakings — Meaning*
(Art. 81(1) EC)

1. 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.

vices in a collective manner. However, the prohibitions enacted by these provisions of the Treaty do not affect rules concerning questions which are of purely sporting interest and, as such, have nothing to do with economic activity.

(see para. 22)

2. Where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportsmen, it falls, more specifically, within the scope of Article 39 EC et seq. or Article 49 EC et seq.

These Community provisions on freedom of movement for persons and freedom to provide services not only apply to the action of public authorities but extend also to rules of any other nature aimed at regulating gainful employment and the provision of ser-

With regard to the difficulty of severing the economic aspects from the sporting aspects of a sport, the provisions of Community law concerning freedom of movement for persons and freedom to provide services do not preclude rules or practices justified on non-economic grounds which relate to the particular nature and context of certain sporting events. However, such a restriction on the scope of the provisions in question must remain limited to its proper objective. It cannot, therefore, be relied upon to exclude the whole of a sporting activity from the scope of the Treaty.

In light of all of these considerations, it is apparent that the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down. If the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty. It follows that the rules which govern that activity must satisfy the requirements of those provisions, which, in particular, seek to ensure freedom of movement for workers, freedom of establishment, freedom to provide services, or competition.

undertaking, whether the latter restricts competition or abuses its dominant position, and whether that restriction or that abuse affects trade between Member States.

Therefore, even if those rules do not constitute restrictions on freedom of movement because they concern questions of purely sporting interest and, as such, have nothing to do with economic activity, that fact means neither that the sporting activity in question necessarily falls outside the scope of Articles 81 EC and 82 EC nor that the rules do not satisfy the specific requirements of those articles.

(see paras 23-31)

Thus, where engagement in the sporting activity must be assessed in the light of the Treaty provisions relating to freedom of movement for workers or freedom to provide services, it will be necessary to determine whether the rules which govern that activity satisfy the requirements of Articles 39 EC and 49 EC, that is to say do not constitute restrictions prohibited by those articles. Likewise, where engagement in the activity must be assessed in the light of the Treaty provisions relating to competition, it will be necessary to determine, given the specific requirements of Articles 81 EC and 82 EC, whether the rules which govern that activity emanate from an

3. The compatibility of rules with the Community rules on competition cannot be assessed in the abstract. Not every agreement between undertakings or every decision of an association of undertakings which restricts the freedom of action of the parties or of one of them necessarily falls within the prohibition laid down in Article 81(1) EC. For the purposes of application of that provision to a particular case, account must first of all be taken of the overall context in which the decision of the

association of undertakings was taken or produces its effects and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and are proportionate to them.

The general objective of anti-doping rules relating to sport is to combat doping in order for competitive sport to be conducted fairly and includes the need to safeguard equal chances for athletes, athletes' health, the integrity and objectivity of competitive sport and ethical values in sport. In addition, given that penalties are necessary to ensure enforcement of the doping ban, their effect on athletes' freedom of action must be considered to be, in principle, inherent itself in the anti-doping rules.

Therefore, even if anti-doping rules are to be regarded as a decision of an association of undertakings limiting the freedom of action of the persons whom they cover, they do not, for all that, necessarily constitute a restriction of competition incompatible with the common market, within the meaning of Article 81 EC, inasmuch as they are

justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes.

However, the penal nature of such anti-doping rules and the magnitude of the penalties applicable if they are breached are capable of producing adverse effects on competition because they could, if penalties were ultimately to prove unjustified, result in an athlete's unwarranted exclusion from sporting events, and thus in impairment of the conditions under which the activity at issue is engaged in. It follows that, in order not to be covered by the prohibition laid down in Article 81(1) EC, the restrictions thus imposed by those rules must be limited to what is necessary to ensure the proper conduct of competitive sport. Rules of that kind could indeed prove excessive by virtue of, first, the conditions laid down for establishing the dividing line between circumstances which amount to doping in respect of which penalties may be imposed and those which do not, and second, the severity of those penalties.

(see paras 42-45, 47, 48)