

In support of his claims, the applicant alleges:

- the retroactive application of the contested decision infringes the principles underlying recovery of sums overpaid and, in particular, Article 85 of the Staff Regulations as well as the principles of legitimate expectations and sound administration;
- for the purpose of Article 67 of the Staff Regulations, the orphan's pension is not of like nature to the dependent child allowance. Therefore, the payments made by the administration until February 2002 were not manifestly irregular; rather, it is the deductions under the contested decision which are in point of fact irregular.

Action brought on 11 October 2002 by David Meca-Medina and Igor Majcen against the Commission of the European Communities

(Case T-313/02)

(2002/C 305/62)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 October 2002 by David Meca-Medina, residing in Barcelona (Spain), and Igor Majcen, residing in Ljubljana (Slovenia), represented by J.-L. Dupont, lawyer.

The applicants claim that the Court should:

- annul the Commission's decision notified to the applicants on 5 August 2002 rejecting the complaint of 31 May 2001 against the International Olympic Committee;

Pleas in law and main arguments

By the contested decision, the Commission rejected the complaint lodged by the applicants, who are professional swimmers, that certain practices and rules of the International Olympic Committee (IOC) concerning the fight against doping were contrary to European competition law. The applicants objected, in particular, to the fact that, in connection with the detection of the substance nandrolone, the IOC continues to apply a maximum level which has now been found to lack scientific merit.

They claim that the Commission manifestly erred in fact and in law in finding that, with respect to anti-doping rules, the IOC is not an undertaking for the purposes of Community law. It is clear that the IOC cannot be treated in the same way as a public institution providing social security services and that it does not exercise the prerogatives of a public authority. Moreover, the rules in question affect the conduct of all athletes on the market for the sports which the applicants perform.

In addition, the applicants claim that the Commission committed a manifest error of assessment in finding that, in the present case, the limitation on the freedom of athletes 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 smooth running of competitive sport. The Commission's findings constitute a manifest misapplication of the criteria laid down by the Court of Justice in paragraph 97 of the judgment in *Wouters* ⁽¹⁾ and the restrictive effects of the IOC rules in question are clearly not inherent in the pursuit of the praiseworthy aims of the campaign against doping. According to the applicants, it is for the Commission — in accordance with the 'necessity test' and/or the 'proportionality test' — to declare that a rule which has been proven to have no scientific basis can in no way satisfy the requirements of such tests.

Finally, the Commission's assessment is manifestly incorrect in so far as it fails to recognise Article 49 EC as having any direct horizontal effect. It must be found that, since they do not satisfy a 'test of necessity', the contested IOC rules also infringe Article 49 EC.

⁽¹⁾ Case C-309/99 *Wouters* [2002] ECR I-1577.

Action brought on 15 October 2002 by Marie-Claude Girardot against the Commission of the European Communities

(Case T-316/02)

(2002/C 305/63)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 October 2002 by Marie-Claude

Girardot, residing at L'Haye les Roses (France), represented by Eric Boigelot, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the decisions of the selection board of 5 and 30 July 2001 to exclude from consideration the application of the applicant in internal competition COM/R/502211/2001, as advertised in the combined notice of vacancies and of internal competitions of 28 May 2001;
- annul the decision expressly rejecting the applicant's complaint, the said complaint having been lodged on 29 January 2002 and rejected by an express decision receipt of which was acknowledged by the applicant on 15 July 2002;
- order the defendant to pay the costs in any event.

Pleas in law and main arguments

The applicant entered the service of the Commission on 1 February 1996. She initially worked there as a national expert on secondment and subsequently as a member of the temporary staff. She applied to take part in internal competition COM/R/502211/2001 for the recruitment of officials. According to information received by her, the selection board for that competition found that, as at 1 January 2001, she had not completed five years' service as a member of the temporary staff, so that her name could not be included in the list of candidates admitted to the tests.

The applicant contests that rejection. She argues that account should also have been taken of the period during which she was in the Commission's service as a national expert on secondment. There is nothing to suggest, *prima facie*, that a candidate in an internal competition who has been a national expert on secondment prior to being a member of the

temporary staff should not possess skills and abilities at least equal to, if not superior to, those of candidates who are in the service of the institution only by virtue of their status as members of the temporary staff. Thus, the Commission was not in a position to show that the exclusion of a candidate who has been a national expert on secondment prior to becoming a member of the temporary staff can be justified in the interests of the service.

In support of her action, the applicant also pleads:

- infringement of the first paragraph of Article 27 of the Staff Regulations;
- infringement of the general principle of equality of treatment;
- infringement of the general principle that all administrative decisions must be based on legally valid reasons;
- infringement of the first paragraph of Article 4 and the first paragraph of Article 29 of the Staff Regulations.

Removal from the register of Case T-116/02 ⁽¹⁾

(2002/C 305/64)

(Language of the case: French)

By order of 10 September 2002 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-116/02: Antonio Aresu v Commission of the European Communities.

⁽¹⁾ OJ C 144 of 15.6.2002.