

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE  
29 March 1996

Case T-24/96 R

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v

**European Centre for the Development of Vocational Training**

(Officials – Posting – Suspension of operation – Interim measures)

Full text in German . . . . . II - 479

**Application for:** suspension of the operation of the defendant's decision to post the applicant to Thessaloniki; interim continuation of his post at the Commission office in Berlin.

**Decision:** The suspension granted by order of the President of the Court of First Instance of 29 February 1996 is extended until and including 12 April 1996. The applicant remains posted in Berlin until that date. For the rest, the application is dismissed.

### **Abstract of the Order**

On 12 November 1993, the applicant was engaged by the defendant, the European Centre for the Development of Vocational Training (hereinafter 'the Centre') under a contract of employment for an indefinite period. The contract provided that the applicant's place of employment was to be Berlin, where the Centre then had its seat.

On 1 September 1994, the Council transferred the seat of the Centre to Thessaloniki, by Council Regulation (EC) No 1131/94 of 16 May 1994 amending Regulation (EEC) No 337/75 establishing a European Centre for the Development of Vocational Training (OJ 1994 L 127, p. 1).

A 'framework agreement' of 23 January 1995 on social measures concerning the relocation of the Centre to Thessaloniki, concluded between the Centre's director and the staff committee laid down provisions concerning, *inter alia*, the establishment of staff (paragraph 4.1) and the eventuality of the persons concerned being unable to leave Berlin (paragraph 4.3).

On 1 March 1995, the Centre's staff were made subject to the relevant provisions of the regulations and rules applicable to the officials and other servants of the European Communities, by Council Regulation (EC) No 251/95 of 6 February 1995 amending Regulation (EEC) No 337/75 establishing a European Centre for the Development of Vocational Training (OJ 1995 L 30, p. 1).

The applicant was appointed a probationary official on 1 April 1995 and an established official on 1 January 1996.

Following a request by the applicant pursuant to paragraph 4.3 of the framework agreement, he was assigned for six months as from 1 September 1995 (the date of the actual relocation of the Centre to Thessaloniki) to the Commission office in Berlin (decision by the defendant of 31 July 1995, referring to its general decision of 7 July 1995).

In reply to a request from the applicant that the latter assignment be extended, the defendant notified to the applicant, by letter of 12 February 1996 which the applicant received on 17 February, its decision of 8 February 1996 assigning him to the defendant's seat in Thessaloniki as from 1 March 1996.

The applicant brought the main action for annulment of the decision of 8 February 1996 and an application for interim measures, simultaneously with notification to the defendant of the grounds for his administrative complaint.

By order of 29 February 1996, the President of the Court of First Instance suspended the operation of the contested decision until delivery of the order terminating the present interim proceedings.

## Law

### *Admissibility*

The main action is not clearly inadmissible in so far as it is directed against the refusal of the applicant's request for an extension of his assignment to the Commission office in Berlin (an aim which is sufficiently closely linked to the application for interim measures), since that refusal *prima facie* constitutes a decision which is distinct from the decision of 31 July 1995. Officials granted the

benefit of a measure under paragraph 4.3 of the framework agreement have the possibility of requesting its extension, pursuant to the same provision (paragraphs 55 and 56).

The possibility that the interim measures applied for might interfere with the interests of the Commission, which is not a party to the dispute, can, if necessary, be taken into account at the time of the balancing of the interests involved, and cannot therefore affect the admissibility of the application (paragraph 57).

See: 92/78 R *Simmenthal v Commission* [1978] ECR 1129, paras 9, 10, 18 and 19

The fact that the main action was brought only on the day of the notification to the defendant of the grounds of the claim is not sufficient for the application for interim measures brought in connection with that action to be held inadmissible (paragraph 58)

See: 794/79 R *B v Parliament* [1979] ECR 3635, para. 3

*The degree of urgency and the balancing of the interests involved*

Within the limits imposed by the Staff Regulations, the institutions have a broad discretion in organizing their departments to suit the tasks entrusted to them and in assigning the available staff accordingly. Therefore, in assessing the urgency of an application for interim measures in relation to a re-assignment decision, account must be taken of the fact that, whilst such a measure causes inconvenience for the officials concerned, it is not an abnormal and unforeseeable event in their careers. In those circumstances, suspension of operation can be justified only by imperative

and exceptional circumstances likely to cause the official in question serious and irreparable damage (paragraphs 60 and 61).

See: 161/80 and 162/80 *Carbognani and Coda Zabetta v Commission* [1981] ECR 543, para. 28;  
T-102/95 R *Aubineau v Commission* [1995] ECR-SC II-365, para. 23

Those principles, developed in particular to take account of the many workplaces of the institutions, are particularly applicable in this case since, at first sight, the applicant's activity in Berlin is, essentially at least, performed for the benefit of the Commission rather than the defendant, which is the body in which he occupies a post and which pays him his salary. Paragraph 4.3 of the framework agreement does not prevent the granting of the extension requested by the applicant from being a matter within the discretion of the defendant, whose need to reintegrate the officials concerned may become more acute through the consequences of their continued absence. Moreover, even though it was only after some delay that the Commission made possible the mobility envisaged by the framework agreement (paragraph 4.3 of which was intended, in the applicant's submission, to allow officials to expect such mobility), that is not, *prima facie*, the fault of the defendant, and therefore does not allow the Court to disregard the interests of the service in the Centre (paragraph 63).

The fact that the contested decision obliges the applicant to abandon the centre of his interests in Berlin, where his family and friends are, is within the ambit of what the transfer of an official to a new geographical area of employment may normally entail, and does not constitute serious and irreparable damage (paragraph 65).

The same assessment does not necessarily apply to the likelihood, in the applicant's submission, that the contested decision will adversely affect the cohabitation he has maintained over a number of years with another person. In any event, however, the

fact that he assumed the obligations of an official with full knowledge of what was involved, and thereby accepted the consequences which might follow as regards the place of his employment and hence his private life, prevents the balance of the interests involved from leaning in favour of granting the measures requested (paragraph 66).

The same considerations apply to the applicant's assertion that operation of the contested decision would prevent him from continuing his regular visits to his seriously ill father living in Münster. In any event, the applicant's statements as to the frequency of his visits in the past, and as to the need for those visits, are too vague to justify a finding of serious and irreparable damage (paragraph 67).

On the career level, the applicant does not occupy a budgetary post in the Commission, so that operation of the contested decision cannot threaten him with the 'loss' of that post. Moreover, his posting to Thessaloniki cannot adversely affect his chances of being recruited, by means of transfer, to a vacant post outside the Centre (paragraph 68).

Contrary to what the applicant maintains, the contested decision is not, *prima facie*, capable of affecting his status as an official, his personal dignity or his professional reputation. The threat alleged by the applicant, in view of the wording of the letter of 12 February 1996, that he might be deemed to have resigned merely by reason of the fact that he did not take up his duties on the date set by that decision is not a real threat, since the defendant formally declared at the hearing that such conduct would not be regarded as implied resignation. Moreover, that date did not, *prima facie*, imply a requirement that the applicant was unable to fulfil under acceptable conditions (paragraphs 69 and 70).

It follows that there is no justification for granting the measures requested pending the delivery of judgment in the main action. Having regard to the interests involved, however, it would seem appropriate to extend the suspension of operation ordered on 29 February 1996 for a sufficient length of time to allow the applicant to make the necessary arrangements for taking up his duties in Thessaloniki in conditions similar to those implied in the contested decision. In the meantime, he remains assigned to Berlin. The documents before the Court show that the Commission office has no objection (paragraph 71).

**Operative part:**

**The suspension of operation granted by the order of the President of the Court of First Instance of 29 February 1996 is extended until 12 April 1996 inclusive. Until that date, the applicant remains assigned to Berlin.**

**For the rest, the application for interim measures is dismissed.**