

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
28 November 2003

Case T-200/03 R

V

v

Commission of the European Communities

(Application for interim relief – Application for stay of execution –
Dismissal for inadequate performance – Urgency)

Full text in French II - 1549

Application for: suspension of operation of the Commission's decision of
10 March 2003 to dismiss the applicant because of
inadequate performance

Held: The application for interim relief is dismissed. Costs are
reserved.

Summary

1. Applications for interim measures – Suspension of operation of a measure – Conditions for granting – A prima facie case – Urgency – Cumulative nature – Manner and order in which conditions are to be examined – Discretion of the judge hearing the application – Balancing of all the interests at stake – Provisional nature of the measure

(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. Applications for interim measures – Suspension of operation of a measure – Conditions for granting – Serious and irreparable damage – Burden of proof – Strictly financial harm

(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

3. Applications for interim measures – Suspension of operation of a measure – Conditions for granting – Urgency – Non-material damage which cannot be remedied more satisfactorily by means of interim relief than by a ruling on the substance – None

(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. Article 104(2) of the Rules of Procedure of the Court of First Instance provides that an application for interim relief is to specify the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim relief applied for. Those conditions are cumulative, so that an application for interim relief must be dismissed if any one of them is absent. Where appropriate, the judge hearing the application for interim relief also weighs up the interests involved.

The measure requested must be provisional in the sense that it must not prejudice the points of law or fact in issue or neutralise in advance the effects of the decision subsequently to be given in the main action.

In the context of his overall examination, the judge hearing the application enjoys a broad discretion and is free to determine, having regard to the specific circumstances of the case, the manner and order in which those various conditions are to be examined, there being no rule of Community law imposing a pre-established scheme within which the need to order interim measures must be analysed and assessed.

(see paras 37-39)

See: C-149/95 P(R) *Commission v Atlantic Container Line and Others* [1995] ECR I-2165, para. 22; C-268/96 P(R) *SCK and FNK v Commission* [1996] ECR I-4971, para. 30; C-445/00 R *Austria v Council* [2001] ECR I-1461, para. 73; T-120/01 R *De Nicola v EIB* [2001] ECR-SC I-A-171 and II-783, para. 13

2. The purpose of the procedure for interim relief is not to ensure that the damage is made good but to ensure that the judgment on the substance of the case takes full effect. For the purpose of attaining that objective, the relief sought must be urgent, meaning that, in order to avoid serious and irreparable harm to the applicant's interests, it must be ordered and produce its effects before a decision is reached in the main action.

It is for the party seeking suspension of operation of a measure to prove that he cannot await the outcome of the main proceedings without suffering such harm.

Financial damage cannot, in principle, be regarded as irreparable, or even difficult to repair, because financial compensation can be made for it subsequently.

However, the judge hearing the application for interim measures must determine in the light of the circumstances of the individual case whether immediate implementation of the decision which is the subject of the application for suspension may cause the applicant serious and immediate harm which even the annulment of the contested decision at the end of the main action could no longer repair.

(see paras 51-52, 54, 56)

See: 141/84 R *De Compte v Parliament* [1984] ECR 2575, para. 4; C-65/99 P(R) *Willeme v Commission* [1999] ECR I-1857, para. 62; T-211/95 R *Willeme v Commission* [1999] ECR-SC I-A-15 and II-57, para. 36; T-173/99 R *Elkaïm and Mazuel v Commission* [1999] ECR-SC I-A-155 and II-811, para. 25; T-306/01 R *Aden and Others v Council and Commission* [2002] ECR II-2387, para. 92

3. The effects which the implementation of a decision terminating a member of staff's employment relationship with the institution employing him have on that staff member's psychological state are, in principle, an inescapable and immediate consequence of the decision, and suspending the implementation of the decision at issue would not make good any non-material damage of that nature more than the possible future annulment of the decision at the end of the main action.

(see para. 62)

See: T-198/02 R *N v Commission* [2002] ECR-SC I-A-145 and II-763, para. 53