

ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
11 July 2000 *

In Case T-35/00,

Anthony Goldstein, residing at Harrow, Middlesex (United Kingdom), represented by R. St John Murphy, Solicitor, 3 King's Bench Walk, Inner Temple, London,

applicant,

v

Commission of the European Communities, represented by R. Lyal, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: English.

APPLICATION for annulment of the decision allegedly taken by the Commission in a letter of 21 January 2000 addressed to the applicant's legal adviser,

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

composed of: V. Tiili, President, R.M. Moura Ramos and P. Mengozzi, Judges,

Registrar: H. Jung,

makes the following

Order

- 1 The applicant is a British national residing in the United Kingdom. He is a medical doctor who has specialised in rheumatology. By letter of 1 November 1994 the applicant's lawyer reminded the Commission that the Queen's Bench Division of the High Court of Justice of England and Wales, hearing a dispute between the applicant and the General Medical Council, the competent authority in the field of the training and aptitude of medical specialists in the United Kingdom, had ordered the Commission to forward certain information to it.
- 2 By letter of 7 December 1994, in response to the request of the national court, the Commission supplied the latter with information. Nevertheless, by application

lodged at the Registry of the Court of First Instance on 26 October 1999, the applicant sought compensation for the damage allegedly caused to him by the Commission's failure duly to provide the national court with the information which it had requested. That application for compensation was dismissed by the Court of First Instance as manifestly lacking any foundation in law (see the order of the Court of First Instance of 16 March 2000 Case T-262/99 *Goldstein v Commission*, not published in the ECR).

- 3 By letters of 12 and 29 May 1998 the applicant's legal adviser once more drew to the Commission's attention its duty to supply the national court with the information requested by the latter in 1994. The Commission replied by letter of 30 July 1998, stating that it had already answered the national court's request and that the court had not complained that the answer to its request was inadequate.

- 4 By letter of 3 December 1999 the applicant's legal adviser, referring to his letter of 1 November 1994, once again drew the Commission's attention to its duty to supply the national court with information.

- 5 By letter of 21 January 2000 the Commission responded as follows:

'I refer to your letter ... of 3 December 1999 addressed to the Secretary-General of the Commission regarding the application by UK National Court under Article 10 EC which has been passed on to me for a reply.

I would like to draw your attention to the fact that Mr Trojan's earlier letter addressed to you on 30 July 1998 ... deals already with the point.

If you consider that the Commission has further information relevant to national court proceedings, the appropriate way forward is for Dr Goldstein to make an application to the High Court that it requests the information ...

I hope this clarifies the situation.

...'

- 6 By application lodged at the Registry of the Court of First Instance on 23 February 2000 the applicant sought annulment of the decision allegedly contained in the said letter of 21 January 2000. He also claimed that the Court should declare unlawful certain of the Commission's rules of procedure.
- 7 The defendant contends that the Court should dismiss the application as inadmissible or, in the alternative, as unfounded, and order the applicant to pay the costs.
- 8 It has consistently been held that acts or decisions against which an action for annulment may be brought under Article 230 EC are those which produce binding legal effects capable of affecting the applicant's interests by bringing about a significant change in his legal situation (see judgment in Case T-178/94

ATM v Commission [1997] ECR II-2529, paragraph 53, and order of 16 March 1998 in Case T-235/95 *Goldstein v Commission* [1998] ECR II-523, paragraph 37). Consequently, an action for annulment of a decision which merely confirms a decision not contested within the time-limit for bringing proceedings is inadmissible (order in Case C-12/90 *Infortec v Commission* [1990] ECR I-4265, paragraph 10; judgment in Case C-480/93 P *Zunis Holding and Others v Commission* [1996] ECR I-1, paragraph 14). A decision is merely confirmatory of a previous decision if it contains no new factor as compared with the previous measure and was not preceded by a re-examination (order of 16 March 1998 Case T-235/95 *Goldstein v Commission*, cited above, paragraph 42).

- 9 It must be stated that the Commission's letter of 21 January 2000 addressed to the applicant's legal adviser is confined, on the one hand, to confirming without re-examination the position adopted by the institution in a letter of 30 June 1998 concerning the matter of the information which was to be given to the national court in question and, on the other, to informing the applicant about the manner in which he should then proceed if he wished the Commission to forward further information to a national court. The letter of 21 January 2000 cannot, therefore, be considered to be an act producing binding legal effects capable of affecting the applicant's interests by bringing about a significant change in his legal situation. The first part of the letter is purely confirmatory and the second contains statements which are purely informative, as the applicant himself acknowledged at paragraph 21 of his application.
- 10 In the light of those considerations, it should be recalled that the rule that a decision that is purely confirmatory is not a challengeable measure is based on the concern that the periods prescribed for bringing an action should not be allowed to recommence once they have expired (judgment in Case T-188/95 *Waterleiding Maatschappij v Commission* [1998] ECR II-3713, paragraph 108). In the present case, instead of bringing an action for annulment against the position previously adopted by the Commission with regard to the request of the national court for information mentioned in the letter of 1 November 1994 sent by the applicant's legal adviser to the Commission, the applicant once more, by letter of 3 December 1999, referred to that request without mentioning the existence of any new request by the national court. In consequence, the letter of 3 December 1999 concerning the Commission's alleged duty to forward information to the

national court did no more than draw the attention of the institution once more to a previous request for information on which the Commission had already adopted a position. Since the letter of 3 December 1999 does not constitute a new element, that of 21 January 2000 cannot be considered to arise from examination of a fresh request.

- 11 It follows from all the above that the letter of 21 January 2000 does not constitute a decision open to challenge under Article 230 EC. Moreover, as the applicant has correctly observed at paragraphs 13 to 15 of his application, the plea of illegality which he has put forward under Article 241 EC concerning certain of the Commission's rules of procedure is put forward only in support of his application for annulment of the decision allegedly contained in the letter of 21 January 2000 and would therefore be admissible only if the application for annulment were admissible.

- 12 In consequence, without further steps in the procedure being taken, the action must be dismissed in its entirety as manifestly inadmissible, in accordance with Article 111 of the Rules of Procedure of the Court of First Instance.

Costs

- 13 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. In the present case, the defendant applied for costs to be awarded against the applicant. Since the applicant has been unsuccessful, he must bear the costs.

14 In accordance with the second paragraph of Article 87(3) of the Rules of Procedure, the Court may order a party, even if successful, to pay to the other party costs which it has caused that party to incur and which the Court considers unreasonable or vexatious. The costs relating to proceedings which are themselves unreasonable or vexatious must also be regarded as such. It must be held that this action is vexatious. In the first place, it is particularly ill-judged, inasmuch as it seeks to have it established that the information supplied by the Commission in response to the request of a national court was inadequate, whereas the actions of the institution which are complained of date from 1994 and the applicant knew, or ought to have known, in the light of earlier proceedings involving him, that confirmatory decisions by the Commission could not, in any event, be challenged by an action for annulment before the Court (see, in particular, the order of 16 March 1998 in Case T-235/95 *Goldstein v Commission*, cited above). Second, the very facts giving rise to this dispute show the applicant's conduct to have been vexatious, in that he continued to send the Commission letters which, essentially, always said the same thing, notwithstanding the fact that the institution had long since clearly taken a position on the matter raised in those letters. Finally, the present action is rendered even more vexatious by the fact that it continues a series of actions brought in an equally ill-considered manner by the applicant seeking either compensation, assessed at EUR 100 000, for damage caused by the selfsame alleged failure by the Commission to cooperate with the national court or interim measures relating to the conduct of the Commission in issue (order of 16 March 1998, *Goldstein v Commission*, cited above; orders of the President of the Court of 15 December 1999 in Case T-262/99 R I *Goldstein v Commission*, of 24 January 2000 in Case T-262/99 R II *Goldstein v Commission*, and of 10 April 2000 in Case T-262/99 R III *Goldstein v Commission*, not published in the ECR).

15 The applicant must, accordingly, be ordered to reimburse the Commission all the expenses which it has incurred in dealing with the applicant's requests (see paragraphs 3 to 6, above).

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. The action is dismissed as manifestly inadmissible.
2. The applicant shall pay the costs and shall reimburse the Commission all the expenses which it has incurred in dealing with the applicant's requests which gave rise to this action and which form its subject-matter.

Luxembourg, 11 July 2000.

H. Jung

Registrar

V. Tiili

President