

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
14 August 2002

Case T-198/02 R

N

v

Commission of the European Communities

(Procedure for interim relief – Suspension of operation – Disciplinary proceedings – Removal from post)

Full text in French II - 763

Application for: suspension of operation of the decision of 25 February 2002 by which the appointing authority imposed on the applicant the disciplinary measure of removal from post without reduction or withdrawal of entitlement to retirement pension, provided for by Article 86(2)(f) of the Staff Regulations of Officials of the European Communities.

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

Summary

1. Applications for interim measures – Suspension of operation of a measure – Conditions for granting – Urgency – Circumstances in which the non-material damage 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))

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(1) and (2))

1. The purpose of the procedure for interim relief is not to ensure that damage is compensated for, but that the judgment on the substance of the case is fully effective. In order to achieve the latter objective, the measures sought must be urgent in the sense that it is necessary, to avoid serious and irreparable damage to the applicant's interests, that they be ordered and produce their effects before the decision in the main action is taken. Damage consisting of the effects which the implementation of a decision imposing the disciplinary measure of removal from post has on an official's psychological state is, in principle, an inescapable and immediate consequence of any decision of that type. Moreover, 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 paras 50, 52-53)

See: C-65/99 P(R) *Willeme v Commission* [1999] ECR I-1857; paras 60, 61 and 62;
T-173/99 R *Elkaïm and Mazuel v Commission* [1999] ECR-SC I-A-155 and II-811, para.
25; T-120/01 R *De Nicola v EIB* [2001] ECR-SC I-A-171 and II-783, para. 43

2. 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 harm. Purely financial damage cannot, in principle, be regarded as irreparable, or even difficult to repair, because financial compensation can be made for it subsequently. 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 decision at the end of the main action could no longer repair.

(see paras 50, 55, 57)

See: 141/84 R *De Compte v Parliament* [1984] ECR 2575, para. 4; T-549/93 R *D v Commission* [1993] ECR II-1347, para. 45; T-203/98 R *Tzikis v Commission* [1999] ECR-SC I-A-37 and II-167, para. 50; *Willeme v Commission*, cited above, paras 36 and 37; T-300/01 R *De Nicola v EIB* [2002] not published in the ECR, para. 59