

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
17 October 2002

Case T-215/02 R

Santiago Gómez-Reino
v
Commission of the European Communities

(Procedure for interim relief – Officials – Admissibility –
Act adversely affecting an official)

Full text in French II - 1019

Application for: interim measures, seeking orders for, first, the production of certain documents, second, the suspension of a series of decisions adopted or the prohibition of adoption of future decisions concerning internal investigations conducted by the European Anti-Fraud Office (OLAF) and, third, the adoption of measures under Article 24 of the Staff Regulations of Officials of the European Communities

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

Summary

*1. Applications for interim measures – Conditions for admissibility – Admissibility of the main action – Irrelevance – Limits
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(1))*

*2. Applications for interim measures – Suspension of operation of a measure – Interim measures – Conditions for granting – Urgency – Prima facie case – Cumulative nature
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))*

*3. Officials – Actions – Act adversely affecting an official – Concept – Decisions concerning internal investigations of the European Anti-Fraud Office (OLAF) – Absence of report containing findings personally implicating an official – Excluded
(Staff Regulations, Arts 90(2) and 91(1); Regulation No 1073/1999 of the European Parliament and of the Council, Art. 9)*

*4. Officials – Actions – Claim for compensation related to a claim for annulment – Inadmissibility of claim for annulment resulting in inadmissibility of claim for compensation
(Staff Regulations, Arts 90 and 91)*

*5. Applications for interim measures – Claim that an institution should be ordered to declare non-existence of new facts justifying reopening disciplinary pleadings – Claim outside the jurisdiction of the judge hearing the application for interim measures
(Staff Regulations, Annex IX, Art. 11)*

1. The issue of the admissibility of the main action must not as a matter of principle be examined in a procedure for interim relief, but must be reserved for the examination of the main application, unless it is apparent at first sight that the latter

is manifestly inadmissible. To rule on admissibility at the interlocutory stage where an application is not, at first sight, clearly inadmissible would be tantamount to prejudging the decision of the Court of First Instance on the main action.

(see para. 26)

See: T-196/98 R *Peña Abizanda and Others v Commission* [1999] ECR-SC I-A-5 and II-15, para. 10, and the case-law cited; T-208/00 R *Barleycorn Mongolie and Boixader Rivas v Parliament and Council* [2000] ECR-SC I-A-209 and II-941, para. 13

2. Article 104(2) of the Rules of Procedure of the Court of First Instance provides that an application for an interim measure must state the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measure applied for. Those conditions are cumulative, so that an application for suspension of the operation of a measure must be dismissed if any one of them is absent.

(see para. 27)

See: T-211/98 R *Willeme v Commission* [1999] ECR-SC I-A-15 and II-57, para. 18

3. The existence of an act adversely affecting a person within the meaning of Articles 90(2) and 91(1) of the Staff Regulations is a mandatory condition for the admissibility of any action brought by officials against the institution by which they are employed. Only measures which produce binding legal effects capable of directly and immediately affecting the applicant's interests by significantly altering his legal situation constitute acts or decisions against which actions for annulment may be brought.

No such act can be identified in the case of an official who complains that the European Anti-Fraud Office (OLAF) is conducting investigations into misconduct with which he may be charged when there is no report by that agency, as referred to in Article 9 of Regulation No 1073/1999 concerning investigations conducted by OLAF, drawn up under the authority of its director and sent to the institution in question, containing findings personally implicating him, and that, moreover, no legal or disciplinary action has been taken against the official concerned following such a report.

(see paras 42, 46-48, 54)

See: 32/68 *Grasselli v Commission* [1969] ECR 505, paras 4 to 7; 17/78 *Deshormes v Commission* [1979] ECR 189, para. 10; T-20/92 *Moat v Commission* [1993] ECR II-799, para. 39; T-391/94 *Baiwir v Commission* [1996] ECR-SC I-A-269 and II-787, para. 34; T-293/94 *Vela Palacios v ESC* [1996] ECR-SC I-A-305 and II-893, para. 22

4. In actions brought by officials, a claim for compensation for material or non-material damage must be rejected where it is closely related to a claim for annulment which has itself been rejected either as inadmissible or as unfounded.

(see para. 55)

See: T-273/94 *N v Commission* [1997] ECR-SC I-A-97 and II-289, para. 159; T-386/00 *Gonçalves v Parliament* [2002] ECR-SC I-A-13 and II-55, para. 92

5. An application for interim measures brought by an official, claiming that an institution should be ordered to issue, by virtue of its duty to provide assistance, a declaration that there are no new facts capable of resulting in the reopening of disciplinary proceedings which were previously initiated against the official concerned and did not result in any disciplinary measure, must be dismissed. It is not for the judge hearing the application for interim measures either to adopt a position on facts which have not been established, the occurrence of which is, moreover, uncertain, or to order the administration to waive in advance the exercise of rights expressly conferred on it by the Staff Regulations. It is for the appointing authority to take any action which it deems appropriate when it is informed of such new facts, as is clear from the express wording of Article 11 of Annex IX to the Staff Regulations.

(see para. 58)