

Case T-21/93 R

Carlos Afonso Camarinha Lobão Peixoto

v

Commission of the European Communities

(Procedure for interim relief — Suspension of operation of a measure —
Conditions for granting)

Order of the President of the Court of First Instance, 5 April 1993 II - 464

Summary of the Order

1. *Applications for interim measures — Suspension of operation — Conditions for granting — Prima facie case — Disciplinary measure imposed by the appointing authority of greater severity than that proposed by the disciplinary board although based on the same assessment of the facts*

(EEC Treaty, Art. 185; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. *Applications for interim measures — Suspension of operation — Conditions for granting — Serious and irreparable damage — Pecuniary damage — Non-financial damage — Balancing of all the interests involved — Disciplinary measure imposed long after the alleged misconduct*

(EEC Treaty, Art. 185; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. For the purposes of suspending the operation of a decision imposing a penalty on an official as a disciplinary measure, the requirement of a *prima facie* case is satisfied where the appointing authority, without contradicting the assessment of the facts contained in the reasoned opinion of the disciplinary board, has imposed a more severe penalty than that proposed

by that board and where — although without prejudice to the question whether or not it is legal — the characterization of the facts by the appointing authority in the contested decision at first sight causes the Court hearing the application for interim measures to entertain serious doubts.

2. As regards the precondition for suspension of the operation of a decision to be granted that there must be a risk that the person seeking suspension might suffer serious and irreparable damage, purely pecuniary damage cannot, in principle, be regarded as irreparable, or even difficult to repair, in so far as it may be the subject of financial compensation at a later stage. However, the Court hearing an application for interim measures must, having regard to the institution's interest in enforcing the contested decision, examine the circumstances of each case and consider, on that basis, whether the decision is causing the applicant damage which could not be made good even if the decision were to be annulled in the main proceedings.

A decrease in an official's monthly income of about 12%, resulting from his down-

grading, cannot be regarded as constituting serious and irreparable damage since, if the application in the main proceedings were to be upheld, the applicant would recover the difference in salary resulting from his downgrading.

On the other hand, as regards the damage resulting both from the undermining of the applicant's professional integrity and reputation and from the aggravation of his psychological state, it must be conceded that, in view of the fact that it was more than five years after misconduct which it describes as extremely serious and of which it had notice more than four years before commencement of the disciplinary proceedings that the appointing authority imposed a penalty on him, without being bound by any limitation period set for that purpose, the interests of the official would appear to outweigh those of the institution which imposed the penalty.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
5 April 1993 *

In Case T-21/93 R,

Carlos Afonso Camarinha Lobão Peixoto, an official of the Commission of the European Communities, represented by **Américo Thomati**, of the Lisbon Bar,

applicant,

* Language of the case: Portuguese.