

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
21 May 2001

Case T-52/01 R

Jürgen Schaefer
v
Commission of the European Communities

(Applications for interim measures – Officials – Reassignment – Admissibility
– *Prima facie* case – Urgency)

Full text in Spanish II - 543

Application for: first, suspension of operation of the Commission's decision of 12 February 2001 transferring the applicant to Brussels and, secondly, suspension of any procedure initiated with a view to filling the vacancy arising from that reassignment.

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

Summary

1. Officials – Actions – Time-limits – Point from which time starts to run – Oral communication – Burden of proof of receipt of notification of the contested decision (Staff Regulations, Arts 90 and 91)

*2. Applications for interim measures – Suspension of operation of a measure – Conditions for granting – Prima facie case – Decision reassigning to headquarters an official previously assigned to a Commission delegation in a non-member State – Infringement of the right of the person concerned to further training and instruction – Obligation of the Commission to verify, before reassigning the official concerned, the validity of the reservations expressed by the non-member State with regard to him – Rejected
(Article 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2); Staff Regulations, Art. 24, third para.)*

3. Officials – Organisation of departments – Assignment of staff – Discretion of the administration – Argument based on the Charter of fundamental rights of the European Union

1. It is the responsibility of the party alleging that an action is out of time, having regard to the time-limits laid down in the Staff Regulations, in reliance on alleged oral communication of the contested decision, to prove that that oral communication enabled the applicant to take cognisance of the decision.

(see para. 39)

See: 58/88 *Olbrechts v Commission* [1989] ECR 2643, para. 10

2. With regard to the condition that a *prima facie* case must be made by an application for suspension of operation of a decision reassigning to headquarters an official previously assigned to a Commission delegation in a non-member State, there is manifestly no substance to the argument of the person concerned, based on the third paragraph of Article 24 of the Staff Regulations, that the measure at issue infringes his right to further training and instruction. In the first place, it has not been proved that the obligation to facilitate such training, which is imposed on the Communities, actually establishes a right which may be exercised by an individual official. In the second place, the wording of that provision makes it clear that the obligation is subject, in particular, to the condition that '[such training and instruction should be] compatible with the proper functioning of the service'.

Similarly, the argument that the reservations expressed by the non-member State in which the official performs diplomatic duties for the Commission would justify his transfer only if the latter, following an inquiry, found those reservations to be valid is not a serious one. The Court of Justice has clearly held that 'internal relationship difficulties may justify the transfer of an official in the interests of the service ... irrespective of the question of responsibility for the incidents in question'. That case-law is applicable *a fortiori* where such difficulties concern an official performing his duties in a diplomatic context.

(see paras 41-42)

See: 124/78 *List v Commission* [1979] ECR 2499, para. 13; C-294/95 P *Ojha v Commission* [1996] ECR I-5863, paras 41 and 42

3. Even if the Charter of fundamental rights of the European Union could affect the interpretation of the Staff Regulations, notwithstanding the fact that it is not binding, a general and unsubstantiated reference in an application for interim measures to certain of its provisions can in no circumstances call into question the case-law on the power of the Community institutions to reassign an official in the interests of the service.

(see para. 44)