JUDGMENT OF THE COURT (Fifth Chamber)

21 April 1994 *

In Case C-22/93 P,

Anna Maria Campogrande, an official of the Commission of the European Communities, represented by Alain H. Pilette, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 8 Rue Zithe,

appellant,

APPEAL against the judgment of the Court of First Instance (Third Chamber) of the European Communities of 19 November 1992 in Case T-80/91 *Campogrande* v *Commission* [1992] ECR II-2459, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Joseph Griesmar, Legal Adviser, and Ana Maria Alves Vieira, a member of its Legal Service, acting as Agents, assisted by Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, D. A. O. Edward (Rapporteur), R. Joliet, G. C. Rodríguez Iglesias and M. Zuleeg, Judges,

Advocate General: G. Tesauro,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 January 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 21 January 1993, Anna-Maria Campogrande brought an appeal pursuant to Article 49 of the Protocol on the Statute of the Court of Justice of the EEC and the corresponding provisions of the Protocol on the Statute of the Court of Justice of the ECSC and the EAEC against the judgment delivered by the Court of First Instance on 19 November 1992 in Case T-80/91 *Campogrande* v *Commission* dismissing her application for the annulment of the reprimand addressed to her by the Commission on 13 February 1991.

2 It is apparent from the contested judgment that the facts of the case are as follows.

3 As the result of a judgment in default given against her in a civil case, Mrs Campogrande ascertained in June 1989 that her name and that of her husband appeared in a register of the commune of Ixelles at an address which had not been theirs since 1981. This registration was due to the fact that, pursuant to the Agreement concluded on 3 April 1987 between the Institutions of the European Communities established in Belgium and the Belgian Government, on information concerning the officials of the Institutions (hereinafter referred to as 'the Agreement'), the Commission had forwarded her address to the Belgian authorities, which had informed the commune concerned (paragraph 6).

4 Article 1 of the Agreement provides that 'the Institutions shall twice a year notify the Ministry for Foreign Affairs, Foreign Trade and Development Cooperation of the information specified below concerning their officials and other agents', including in particular their full names and principal address. Article 4 of the Agreement provides that 'the Ministry for Foreign Affairs, Foreign Trade and Cooperation in Development shall inform the communes concerned of the officials and other agents of the Institutions established on their territory...'.

5 The Agreement and the obligations arising therefrom were the subject of a publication distributed to the Commission's staff in *'Informations administratives'* numbers 1/87 of 9 April 1987, 4/88 of 10 February 1988 and 22a/88 of 13 July 1988. On 9 December 1987 the Commission's administration requested the officials of that institution established in Belgium to fill in a questionnaire to bring their personal data up to date, in order that the latter might be forwarded to the Belgian authorities, in accordance with the Agreement. Mrs Campogrande did not fill in the questionnaire (paragraph 5).

6 On 6 September 1989 Mrs Campogrande submitted a complaint in which she challenged the right of the Commission to forward her name and address to the Belgian authorities and requested the Commission to repudiate the Agreement. When investigating that complaint, the Commission noted that Mrs Campogrande had

never informed the administration of her change of address after she moved to the commune of Ixelles on 22 January 1979 (paragraph 7).

7 In its decision of 11 April 1990, the Commission expressly rejected Mrs Campogrande's complaint on the ground that the legal basis of the Agreement was the Protocol on the Privileges and Immunities of the European Communities (hereinafter referred to as 'the Protocol'). In particular, the Commission explained to her that the Agreement merely established a system for communicating to the Belgian authorities the information mentioned in the second paragraph of Article 16 of the Protocol, which states that 'the names, grades and addresses of officials and other servants ... shall be communicated periodically to the Governments of the Member States'. Finally, the Commission reminded Mrs Campogrande of her duties under Article 55 of the Staff Regulations of the European Communities (hereinafter referred to as 'the Regulations'), by virtue of which 'officials in active employment shall at all times be at the disposal of their institution'. In the Commission's view, that provision requires them, *inter alia*, to communicate their private address to the administration of their institution. Mrs Campogrande did not bring an action against the express rejection of her complaint (paragraph 7).

8 Subsequently, the Director of Personnel repeatedly asked Mrs Campogrande to inform the Commission of her private address, under threat of disciplinary proceedings. Since she continued to refuse to supply that information, disciplinary proceedings were brought against her. On 13 February 1991 she was given a reprimand, the disciplinary measure provided for by Article 86(2)(b) of the Regulations (paragraph 8).

9 By letter of 15 April 1991, Mrs Campogrande lodged a complaint against that measure. The Commission's implied rejection of the complaint was confirmed on 30 October 1991 by a decision expressly rejecting it and notified to Mrs Campogrande on 11 November 1991 (paragraph 9).

10 By application lodged at the Registry of the Court of First Instance on 15 November 1991, Mrs Campogrande brought an action for the annulment of the defendant's decision impliedly rejecting her complaint of 15 April 1991.

11 Mrs Campogrande submitted six pleas in law in support of her application. At the oral procedure she withdrew three of them. In the three which she maintained, she claimed, first, that the disputed decision was based on an error of fact, secondly, that the disciplinary measure imposed on her had no legal basis since Article 55 of the Regulations did not require officials to communicate their private addresses and, thirdly, that she would have been willing to communicate her private address to the Commission if the latter had guaranteed that the information would not be recorded in the population registers of the Kingdom of Belgium. Such registration would be a breach of Article 12(b) of the Protocol, which provides that officials and dependent members of their families are not to be subject to immigration restrictions or to formalities for the registration of aliens.

12 In the contested judgment, the Court of First Instance first dismissed the submission concerning an error of fact. That part of the judgment of the Court of First Instance is not the subject of this appeal.

13 The Court of First Instance next dismissed the submission that the disciplinary measure had no legal basis. In that respect, it ruled that the first paragraph of Article 55 of the Regulations could be invoked directly against officials on whom it imposed a sufficiently precise obligation. It also considered that the effective implementation of that provision presupposes that the administrative authorities have at their disposal the information enabling them to make contact with their employees at any time at their private address, and that, by refusing to communicate her address, Mrs Campogrande had therefore failed to comply with her obligations under the Regulations.

14 Lastly, the Court of First Instance dismissed the submission that the Agreement was incompatible with the Protocol. In the context of that argument, the Court of First Instance considered, first, that there was no conflict between the two concerning the information which the Commission is required to communicate to the Member States, since Article 1 of the Agreement and the second paragraph of Article 16 of the Protocol both provide for the Commission to communicate Community officials' private addresses to the Belgian authorities. Secondly, the Court of First Instance considered that the Protocol did not prevent Member States from

being informed at all times of population movements on their territory and that, for that purpose, it was for the Member States to determine which authorities were responsible for providing that public service. Thirdly, the Court of First Instance considered that its duty was solely to ascertain whether a sufficient legal basis for the disciplinary measure was to be found in the Regulations and that the Commission had not failed to comply with either the Protocol or the Regulations in requiring the appellant to communicate her private address. It was not, however, for that Court to determine whether the interpretation of the conditions in the Agreement made by the Belgian authorities was valid. Therefore, the appellant could not plead that that interpretation breached the terms of the Agreement.

15 The Court of First Instance decided that, in the circumstances, Mrs Campogrande's application must be dismissed.

16 In her appeal, Mrs Campogrande asks the Court of Justice to set aside the judgment of the Court of First Instance on the ground that it is in breach of Community law, decide the original action, declare that action to be well founded and grant the forms of order sought in the proceedings at first instance.

17 Mrs Campogrande puts forward two pleas in law in support of her appeal.

First plea: absence of legal basis for the disciplinary measure

18 In her first plea in law, Mrs Campogrande claims that in holding, at paragraph 26 of the contested judgment, that the communication of 9 December 1987 addressed to officials, requesting them in particular to give their addresses to the Commission, had a sufficient legal basis in Article 55 of the Regulations, the Court of First Instance wrongfully enlarged the conditions to which the Regulations subject the application of disciplinary measures. She also noted that the Court of First

Instance found that the purpose of that communication was to enable the administrative authorities to contact their employees at their private address, whereas the Commission itself had justified the communication on the ground that it was intended to spare employees the difficulties caused by the complete absence of entry in the population registers.

19 In order to decide whether that plea is well founded, it is sufficient to note the wording of the first paragraph of Article 55 of the Regulations: 'officials in active employment shall at all times be at the disposal of their institution'.

20 Since that provision requires no implementing measure and may be invoked directly against officials, it supposes that the institution in question has available to it all the information necessary to enable it to contact its officials at their home. Therefore, by refusing to communicate her private address to her institution, Mrs Campogrande has failed to comply with her obligations under that provision.

21 Furthermore, Mrs Campogrande is mistaken in asserting that the Court of First Instance held that the purpose of the communication of 9 December 1987 was to enable the administrative authorities to contact their employees at their private addresses, whereas the Commission itself had justified the communication on the ground that it was intended to spare employees the difficulties they might be caused by the complete absence of entry in the population registers. In the first place, there is no indication in the contested judgment that the Court of First Instance held that the purpose of the communication of 9 December 1987 was that first stated above and, secondly, the wording of the communication makes it clear that it was not the communication itself, but the Agreement, which was intended to avoid such difficulties. In any case, the fact that the Commission requested that information pursuant to the Agreement is irrelevant since the duty of officials to communicate their private addresses stems directly from Article 55 of the Regulations.

22 That being so, the Court of First Instance was correct in ruling that Mrs Campogrande's conduct constituted a failure to comply with her obligations under Article 55 of the Regulations. The first plea in law must, therefore, be dismissed.

Second plea: incompatibility of the Agreement with the Protocol

23 In her second plea, while she concedes that the Agreement does not, according to its precise terms, contain any provision contrary to the Protocol, Mrs Campogrande submits that the Commission interpreted and applied the Agreement in a manner which infringed the Protocol and that she was justified, therefore, in refusing to communicate her address to the Commission.

24 As Mrs Campogrande explains, the Belgian Minister of the Interior and the Civil Service twice stated that Community officials 'shall be noted in the population registers of the commune in which their principal residence is situated', and that such an entry 'will have the same effects as registration' or 'is to be regarded as equivalent to registration in the population registers'. The Commission endorsed that interpretation by permitting the information given to the Belgian authorities to be entered in the population registers, which was equivalent to registration. According to the appellant, that interpretation infringes Article 12(b) of the Protocol, which provides that Community officials are not to be subject 'to immigration restrictions or to formalities for the registration of aliens'.

25 Mrs Campogrande claims that the Commission has thus failed to fulfil its obligations under Article 12 of the Protocol and that she was entitled to refuse to communicate her address to the administration since the institution refused to guarantee that the address would not be recorded in the Kingdom of Belgium's population registers. Consequently, Mrs Campogrande considers that the Court of First Instance failed in its obligation to review the legality of the contested decision because it confined itself to a strictly literal interpretation of the Agreement, despite the interpretation of it adopted by the Commission (see in particular paragraph 43 of the contested judgment).

26 With regard to that submission, it is sufficient to recall that the second paragraph of Article 16 of the Protocol provides that 'the names, grades and addresses of officials ... shall be communicated periodically to the Governments of the Member States'.

27 It is apparent from the wording of that provision that the Commission was not only entitled, but also bound, to communicate Mrs Campogrande's private address to the Belgian authorities.

28 In any case, an official may in no circumstances invoke an alleged breach of the Protocol in order to escape his obligation under the Regulations to give his private address to the institution to which he belongs. If he believes that the Protocol has been breached, he has only to make use of the procedure provided for by the second paragraph of Article 23 of the Regulations, which provides that when privileges and immunities enjoyed by officials are in dispute, the official concerned shall immediately inform the appointing authority.

29 That being so, the second plea put forward by Mrs Campogrande must be dismissed.

30 It follows from all the foregoing considerations that Mrs Campogrande's appeal is unfounded and must therefore be dismissed.

Costs

31 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Article 70 of those Rules provides that in proceedings

brought by officials, the institutions are to bear their own costs. However, under Article 122 of the Rules of Procedure, Article 70 is not to apply to appeals brought by officials or other servants of the institutions. Since Mrs Campogrande has failed in her submissions, she must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1) Dismisses the appeal as unfounded;

2) Orders Mrs Campogrande to pay the costs.

Moitinho de Almeida Edward Joliet

Rodríguez Iglesias Zuleeg

Delivered in open court in Luxembourg on 21 April 1994.

R. Grass
Registrar

J. C. Moitinho de Almeida
President of the Fifth Chamber