OPINION OF MR ADVOCATE GENERAL TESAURO
delivered on 20 January 1994 *

Mr President,
Members of the Court,

1. In this appeal, Mrs Campogrande asks the Court of Justice to set aside the judgment given by the Court of First Instance on 19 November 1992 in Case T-80/91 [1] and to admit her original application which was in essence for the annulment of the reprimand addressed to her by way of disciplinary action, in accordance with Article 86 of the Staff Regulations of the European Communities (hereinafter referred to as 'the Regulations'), by a decision of the Commission of 13 February 1991.

The measure in question was imposed as the result of disciplinary proceedings brought against the appellant on account of her refusal to communicate her private address, a refusal that the Commission considered was contrary to Article 55 of the Regulations and all the more serious in that it prevented the Commission from fulfilling its obligation to notify the Belgian authorities of the private addresses of its employees, which it considers itself obliged to do on the basis of Article 16(2) of the Protocol on the Privileges and Immunities of the European Communities (hereinafter referred to as 'the Protocol') and Article 1 of 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 employees of the Institutions (hereinafter referred to as 'the Agreement').

2. A brief summary of the relevant provisions will be of assistance for a better understanding of the terms of the matter.

I would first of all point out that, in accordance with Article 86(1) of the Regulations, failure to comply with one of the obligations under the Regulations makes employees liable to disciplinary action and that, in accordance with the first paragraph of Article 55: 'officials in active employment shall at all times be at the disposal of their institution'. The requirement for officials to be at the disposal of the institution outside normal working hours, and thus at home too, is to be laid down, in accordance with the third paragraph of Article 55, by means of the adoption of detailed rules for the application thereof.

Article 12(b) of the Protocol provides that in the territory of the Member States and whatever their nationality, officials and other servants of the Communities, together with their spouses and dependent members of their families, are not to be subject to immi-

* Original language: Italian.

1 — Judgment in Case T-80/91 *Campogrande* v *Commission* [1992] ECR II-2459.

gration restrictions or to formalities for the registration of aliens. The second paragraph of Article 16 prescribes, however, that 'the names, grades and addresses of officials and other servants (...) shall be communicated periodically to the Governments of the Member States'. To that may be added that, in accordance with Article 19, 'the institutions of the Community shall, for the purpose of applying this protocol, cooperate with the responsible authorities of the Member States'.

For the purposes of this case, Article 1 of the Agreement must be borne in mind, according to which the institutions are to notify the Ministers for Foreign Affairs, Foreign Trade and Cooperation in Development twice a year of certain information concerning their employees, including registration data and their place of residence. Article 4 of that Agreement provides that relevant communes are to be informed about the employees of the institutions established in their territory.

The Agreement and the obligations arising from it formed the subject of a publication distributed to all members of staff: *Informations administratives* numbers 1/87 of 9 April 1987, 4/88 of 10 February 1988 and 22a/88 of 13 July 1988. Following the conclusion of the Agreement, the Commission's Director-General of Staff and Administration on 9 December 1987 requested the employees of that institution established in Belgium, to fill in a questionnaire designed to bring their personal data up to date, in order that the latter might be forwarded to the Belgian authorities, in pursuance of the second paragraph of Article 16 of the Protocol and Article 1 of the Agreement. The appellant refused to fill in the questionnaire.

3. Here we come to the facts giving rise to the case. Mrs Campogrande ascertained — as the result of a judgment in default given against her in a civil case — that her name and her husband's appeared in a register of the commune of Ixelles at an address which had not been theirs since 1981, this registration being due to the fact that the Commission had earlier forwarded her address to the Belgian authorities which informed the commune in accordance with Article 4 of the Agreement, and she submitted a complaint under Article 90 of the Regulations in which she challenged the right of the Commission to forward such information to the Belgian authorities and requested the repudiation of the Agreement.

The Commission, which on examining the complaint found that Mrs Campogrande had not informed the administration of any change of address since 1979, gave a decision on 11 April 1990 in which it expressly rejected the complaint, stating that the Agreement merely set up a system for communicating to the Belgian authorities information already provided for by Article 16 of the Protocol and intended to facilitate its implementation. At the same time Mrs Campogrande was reminded of her duties under Article 55 of the Regulations, in particular the duty to give her private address to the administration. The appellant did not bring an action challenging the rejection of her complaint.

In spite of subsequent repeated requests by the Director of Staff, Mrs Campogrande continued to refuse to supply her private address, which gave rise to disciplinary proceedings being taken against her, which, as stated earlier, ended in the issue of a reprimand.

4. The disciplinary measure in question formed the subject of a complaint under Article 90 of the Regulations and then of an action. The Court of First Instance, before which the appellant claimed that the disciplinary measure imposed on her was based on a factual error, was without legal foundation and was contrary to the Protocol, dismissed the action in its judgment of 19 November 1992; the Court of Justice is requested to rule on the appeal against that judgment.

The appeal concerns two heads of the judgment, the first in which the Court of First Instance considered that the disciplinary measure in question did have sufficient legal foundation (paragraphs 23-26), and the second in which it ruled that the Agreement was not incompatible with the Protocol (paragraphs 39-43).

5. With reference to the legal foundation of the disciplinary measure, the appellant had claimed before the Court of First Instance that Article 55 of the Regulations did not provide that employees must communicate their private addresses to the administration and that in any case it should be held not to be applicable, since the detailed rules for its application had not been laid down, as required by its third paragraph.

In the light of that argument, the Court of First Instance began by pointing out that Article 55, in requiring employees to be at all times at the disposal of their institutions, imposes on them a precise enough duty which it is not necessary to specify further (paragraph 25); it therefore declared that 'contrary to the claims of the applicant, the communication of 9 December 1987, sent by the defendant to the permanent staff, temporary agents and other auxiliary staff employed in Belgium, does find an adequate legal foundation in the first paragraph of Article 55 of the Regulations, the effective implementation of which supposes that the administrative authorities have available to them information enabling them at any time to make contact with their employees at their private address' (paragraph 26).

It is in essence that declaration that is challenged in Mrs Campogrande's appeal, in which she claims that the Court of First Instance wrongfully enlarged the conditions to which Article 86 of the Regulations makes the imposition of disciplinary measures subject when it held that the communication of 1987 was based on Article 55 of the Regulations.

6. I shall say immediately that such an argument is, in my opinion, quite groundless. Clearly, the declaration of the Court of First Instance quoted above cannot be understood as meaning that the failure to communicate her address constitutes a 'breach' of the communication of 9 December 1987 and thus of Article 55 of the Regulations, but rather as

meaning that the information requested of employees in that communication is (in any case) bound to be given to the administrative authorities under Article 55.

Such an interpretation is supported by the fact that the Court of First Instance, when ruling that Article 55 constituted a sufficient legal basis for the purposes of imposing a disciplinary measure, considered that 'the principles governing the relationship between employer and employee, taken as a whole, and plain common sense, require the employee's address to be known to the employer', with the result that, 'by refusing to communicate her personal address, the applicant made it impossible for her to be at all times at the disposal of the institution and that conduct constitutes a failure on her part to comply with the obligations under the Regulations in question' (paragraph 26).

In short, it is apparent from the foregoing that the Court of First Instance has clearly shown that the refusal to communicate her private address results in a failure to comply with the obligation contained in Article 55 of the Regulations and that the said failure constitutes sufficient grounds, pursuant to Article 86 of the Regulations, for the imposition of a disciplinary measure. The submission in question is therefore unfounded, there being no discernible error of law in the interpretation given by the Court of First Instance.

7. As to the submission based on the supposed incompatibility of the Agreement and the Protocol, the appellant described before the Court of First Instance the difference between the two 'acts' concerning the information which the Commission is bound to communicate to the Member States and the final recipients of that information, and pointed to the breach of the Protocol arising from the unlawful interpretation of the Agreement given by the Belgian authorities.

With respect to those complaints, the Court of First Instance pointed out that: (a) the Protocol (second paragraph, Article 16) and the Agreement (Article 1) both envisage the communication of employees' private addresses (paragraph 41); (b) it was neither the purpose nor the effect of the Protocol to deprive Member States of the chance to be aware, at any time, of population movements concerning their territory, with the consequence that the Agreement could not be regarded as being incompatible with the Protocol on the ground that it provided for the competent ministers to pass on the information in question to the communes concerned (paragraph 42); (c) it was not for the Court of First Instance to assess whether the interpretation of the conditions in the Agreement provided by the Belgian authorities was valid, but only to ascertain whether there was any foundation for the disciplinary measure imposed on the applicant in the Regulations, and more precisely in Article 55, and whether, by requiring private addresses to be communicated, the defendant institution had breached the Regulations or the Protocol (paragraph 43).

8. Before going on to consider Mrs Campogrande's disagreements with that line of argument, I believe that it would be useful

here to point out that the Court of First Instance has shown how, once it is established that 'refusal to communicate an address to the institution constitutes a breach of the obligations under the Regulations laid down by Article 55 of the same, which concern only the internal working of the Commission and not problems relating to the Commission's communicating its employees' addresses to the national authorities of the Member States concerned (...), this plea in law, even if well founded, would not of itself be sufficient to require the annulment of the disciplinary measure' (paragraph 39).

The Court of First Instance considered it desirable, however, to examine the arguments advanced in support of that submission, since the reasoning in the challenged decision is based, at least in part, on the application of the Agreement to the appellant's situation, and also took into account the fact that she declared herself willing to make her address known to the administration provided that it was not recorded in the registers kept by the Kingdom of Belgium. In the statement of the reasons on which the decision regarding disciplinary measures was based, the Commission asserted that it could not give such a guarantee, since that would be contrary to both Article 16 of the Protocol and Article 1 of the Agreement. It added that it was still open to the appellant, if she considered herself entitled to, to make use of the procedure provided for by Article 23 of the Regulations. [2]

2 — The regulation in question provides that, when privileges and immunities are in dispute, the official concerned shall immediately inform the appointing authority.

9. Taking account of the foregoing, I have to wonder whether examination of the submission based on the alleged incompatibility of the Agreement and the Protocol could be dispensed with, if only for reasons of procedural economy.

In that connection, I believe that the question whether that submission has any foundation cannot be considered to be irrelevant with respect to the annulment of the disciplinary measure of a reprimand: I would observe that the established breach of Article 55 of the Regulations, and therefore the challenged disciplinary measure, cannot be dissociated from the fact that the Commission maintained that it could not guarantee that the relevant registration details would not be forwarded to the Belgian authorities. In other words, since the appellant refused to provide her private address on account of the effects and consequences of doing so, if the Agreement were held to be unlawful that would — in my opinion — imply that the established breach of Article 55 of the Regulations could not be regarded as being merely the result of the (unlawful) claim of the Commission to have the right to supply the address to the Belgian authorities.

10. That being stated, I note that in her appeal Mrs Campogrande acknowledged that the Agreement did not, strictly speaking, contain any provision contrary to the Protocol. Nevertheless, she claims that the way in which the Commission interpreted and applied the Agreement was incompatible with Article 12 of the Protocol, as could be inferred from the fact that the institution stated that according to the Agreement offi-

cials and agents 'shall from now on be the subject of a note entered in the population registers of the commune in which they are resident' (Communication of 9 December 1987), that such an entry was tantamount to registration itself (letter of the Commission to the appellant of 22 May 1990) and that 'a note entered by the said communes (...) had the same effects as registration' (Commission's defence before the Court of First Instance).

The appellant thus claims that the Court of First Instance failed to establish whether the contested decision was lawful, inasmuch as it confined itself to a strictly literal interpretation of the Agreement, despite the interpretation of it provided by the Commission. In the appellant's opinion, in short, the Court of First Instance was bound to assess whether the interpretation of the clauses in the Agreement given by the Belgian authorities was valid since the issue was, in essence, the interpretation provided or at least endorsed by the Commission.

11. The Commission maintained that the contested interpretation of the Agreement was in perfect accord with Article 12 of the Protocol, but stated that the provisions under which the said information would be noted in the population registers and the fact that such an entry would amount to registration were laid down by the Belgian authorities and not by the defendant (the respondent in the present case), which manifestly had no competence to enact provisions of that sort. It confined itself instead to referring to the substance of the Belgian circulars on the question and did not provide or in any case endorse that interpretation of the Agreement.

12. Whereas Article 12(b) of the Protocol prohibits any measure obliging officials to apply for entry in population registers, I would point out that that is not what happened in this case, the Agreement being limited solely to providing that addresses are to be forwarded to the communes concerned.

Nor do I believe, unlike the appellant, that it may be deduced from the statement of the Court of Justice that the provision in question implied that 'servants of the Community are exempt from any requirement to register in the population registers in the Member States in which the places of employment of the Community institutions are situated' [3] that, in addition to exempting officials from applying to be recorded in the population registers, it also prohibits any note in the said registers. On the other hand, the Court stated in the same judgment that it is because of the duty to communicate employees' personal addresses, as provided for by Article 16 of the Regulations, that 'the authorities of the Member States in which the places of employment of the institutions are situated are informed of the addresses of officials and other servants of the Communities', [4] which would rather give rise to the supposition that employees are exempt only from the requirement to apply for entry in those registers.

3 — Judgment in Case C-85/85 *Commission* v *Belgium* [1986] ECR 1149, paragraph 21.

4 — Ibid.

13. Another and different question arises from the fact that, according to the Belgian authorities, communication of the addresses and consequent noting in the registers are equivalent to entry in the registers. It does not appear to me that it is for the Court in these proceedings to deal with that question, that is to say, to rule on the interpretation of the Agreement adopted by the Belgian authorities, as it is not pertinent to the case before the Court.

Furthermore, I do not believe that the appellant's argument that the assessment of the Court of First Instance is incorrect on that point, since it wrongly considered that it could not assess the validity of the Agreement as interpreted by the Belgian authorities because that interpretation was endorsed and made its own by the Commission, is relevant.

In that connection, let it suffice to note that establishing whether the interpretation of the Agreement challenged by the appellant is attributable to the Belgian authorities and/or to the Commission falls within the assessment of facts as carried out by the Court of First Instance, which obviously came to the conclusion that the interpretation was attributable solely to the Belgian authorities. It follows that, from that specific point of view, the second submission is inadmissible in that it is based on a finding which cannot be reviewed on appeal.

14. In the light of the foregoing considerations, I suggest that the Court dismiss Mrs Campogrande's appeal.

As to the costs, I propose that all the costs of the proceedings be borne by the appellant, including the costs incurred by the respondent in the appeal proceedings.