ORDER OF THE PRESIDENT OF THE FOURTH CHAMBER OF THE COURT
16 March 1988 *

In Case 44/88 R

Henri de Compte, an official of the European Parliament, represented by Edmond Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-Duchesse-Charlotte,

applicant,

v

European Parliament, represented by F. Pasetti Bombardella, Jurisconsult, and by P. Kyst, a member of its Legal Department, both acting as Agents, assisted by M. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg, L-2929.

defendant,

APPLICATION for the suspension, until the delivery of the judgment in the main action, of the operation of the decision of 18 January 1988 by which the President of the European Parliament downgraded the applicant from Grade A 3 to Grade A 7, Step 6,

THE PRESIDENT OF THE FOURTH CHAMBER,

ruling pursuant to Articles 9 (4) and 96 of the Rules of Procedure,

makes the following

* Language of the Case: French.

Order

1 By an application lodged at the Court Registry on 10 February 1988, Henri de Compte, an official of the European Parliament, applied to the Court for an interim order suspending the operation of the decision of the President of the European Parliament of 18 January 1988 downgrading him from Grade A 3, Step 8 to Grade A 7, Step 6, pursuant to the unanimous recommendation of the Disciplinary Board. The charges against Mr de Compte are as follows:

(1) Misuse of power in his position of accounting officer at the European Parliament and failure to fulfil the duty of ensuring sound financial management;

(2) Opening an account with the Midland Bank, London, on 21 July 1981, with an amount of UKL 400 000 bearing interest at the rate of 16% per annum whereafter that amount remained immobilized without justification for 13 months and no entries relating to those operations were made in the accounts of the European Parliament, as required by Article 63 of the Financial Regulation and Articles 50 and 51 of the implementing rules;

(3) Breach of the duty of proper administration of payment appropriations (second paragraph of Article 20, Article 63, second paragraph of Article 64 and third subparagraph of Article 70 (1) of the Financial Regulation);

(4) Breach of the duty to incur expenditure only upon presentation of proper supporting documents and to keep such documents.

2 According to the documents before the Court, on 14 January 1983 the President of the European Parliament informed Mr de Compte of the existence of certain facts which might lead to the commencement of disciplinary proceedings against him.

3 On 28 January 1983 Mr de Compte was given a preliminary hearing, in accordance with Article 87 of the Staff Regulations of Officials (hereinafter referred to as 'the Staff Regulations'), by the Director-General for Administration, Personnel and Finance of the European Parliament.

4 On 13 April 1983, the President of the European Parliament, acting pursuant to the second paragraph of Article 87 of the Staff Regulations, submitted to the Chairman of the Disciplinary Board a report on the charges against Mr de Compte.

5 The Disciplinary Board met on several occasions between 2 June 1983 and 10 February 1984. On the latter date, the Disciplinary Board proposed by three votes to two that Mr de Compte should be reprimanded. The two members who did not support such a measure were in favour of simply dismissing the charges against him.

6 Pursuant to the final paragraph of Article 7 of Annex IX to the Staff Regulations Mr de Compte was given a hearing on 8 March 1984 by the President of the European Parliament in his capacity as the appointing authority.

7 On 16 March 1984 the President of the European Parliament decided to remove Mr de Compte from his post without a reduction or withdrawal of his pension rights.

8 On 21 March 1984 Mr de Compte submitted to the President of the Parliament, under Article 90 (2) of the Staff Regulations, a complaint against the decision of 16 March 1984 removing him from his post. A supplementary complaint was submitted on 11 April 1984.

9 On 10 April 1984 the European Parliament, by a substantial majority, granted a final discharge to Mr de Compte in respect of the 1981 financial year.

10 On 24 May 1984 the President of the European Parliament, in response to the original and supplementary complaints, decided that instead of being removed from his post Mr de Compte should be downgraded to Grade A 7, Step 6. As grounds for that decision he referred to the reasons upon which the initial decision to remove Mr de Compte from his post had been based.

11 On 4 June 1984 Mr de Compte took the following steps:

(i) He submitted a complaint to the President of the European Parliament in which he argued that it was no longer appropriate simply to refer to the reasons given for the initial decision to remove him from his post since, in the mean time, the European Parliament had granted him a final discharge in respect of the financial year in question, thereby recognizing that his activities as accounting officer were correct and above criticism;

(ii) He brought an action before the Court for the annulment of the aforementioned decision of 24 May 1984 by which he had been downgraded;

(iii) He applied for an interim order suspending the operation of that decision until the Court delivered judgment in the main action.

12 By Order of 3 July 1984 (Case 141/84 R, [1984] ECR 2575) the President of the Third Chamber of the Court ordered the operation of the decision of 24 May 1984 to be suspended until the delivery of the judgment in the main action.

13 By decision of 4 July 1984 the President of the European Parliament dismissed the complaint submitted by the applicant on 4 June 1984.

14 By judgment of 20 June 1985 (Case 141/84, [1985] ECR 1951) the Court held that the proceedings of the Disciplinary Board were vitiated by a fundamental defect (hearing of witnesses in the absence of the person charged or his representative) and consequently annulled the appointing authority's decision of 24 May 1984.

15 By letter of 24 July 1985 the President of the European Parliament forwarded to the Court of Auditors the request made by the Committee on Budgetary Control of the Parliament for a new opinion on the most appropriate way of clearing the deficit found in the delegates' fund for the 1982 financial year.

16 On 7 November 1985 the Court of Auditors gave its opinion, finding that liability lay with the accounting officer and the administrator of advance funds under Article 70 of the Financial Regulation.

17 By decision of 11 July 1986 the European Parliament refused to grant a final discharge to the applicant in respect of the 1982 financial year 'for the difference of BFR 4 136 125 between cash balances and the general accounts' and requested its President to take the measures necessary to resolve the outstanding problem.

18 By letter dated 9 December 1986 the appointing authority informed the applicant that it intended to reopen the disciplinary proceedings against him.

19 On 24 June 1987 the matter was again submitted to the Disciplinary Board on the basis of the report forwarded to it on 13 April 1983.

20 In its Reasoned Opinion of 27 November 1987 the Disciplinary Board took the view that some of the allegations against the applicant were well founded and unanimously recommended to the President of the European Parliament that Article 86 (2) (e) of the Staff Regulations should be applied (that is to say that the applicant should be downgraded).

21 By decision of 18 January 1988, notified by letter of the same date and with effect from 1 February 1988, the President of the European Parliament downgraded the applicant from Grade A 3, Step 8, to Grade A 7, Step 6.

22 On 10 February 1988, pursuant to Article 91 (4) of the Staff Regulations, the applicant, who had previously submitted a complaint to the appointing authority under Article 90 (2) of the Staff Regulations, brought an action for the annulment of the said decision of 18 January 1988 and lodged this application for an interim order suspending the operation of that decision until the delivery of the judgment in the main action.

23 In the applicant's view, the requirement of urgency in order for a measure suspending the operation of a decision to be granted is fulfilled in this case for reasons identical to those given in the Order of the Court of 3 July 1984 with regard to the previous disciplinary proceedings. The substantial and immediate reduction in his salary entailed by the decision taken in his regard will oblige him, in view of his financial situation, to sell in the very near future at least one of three apartments which he owns in order to be able to meet various commitments. However, there is no urgency for the defendant as regards the implementation of its decision. If the Parliament was able to wait two years before commencing or recommencing the disciplinary proceedings following the judgment of 20 June 1985, it can also wait until the end of the main action before implementing the contested decision. Finally, the applicant claims that the loss of income resulting from the implementation of the contested decision is contrary to the rights of the defence because he no longer has sufficient resources to meet the costs of his defence.

24 As regards the existence of grounds establishing a prima facie case for the suspension of operation of the contested decision, the applicant mentions various factual circumstances which, he maintains, at least show that there is a serious case to be answered and that it is supported by sound arguments. The circumstances relied upon by the applicant include:

first, the fact that the disciplinary proceedings were commenced and prosecuted with unreasonable delay;

secondly, the fact that on 10 April 1984 the European Parliament, by a substantial majority, granted him a final discharge in respect of the 1981 financial year on the basis of a report drawn up by its Committee on Budgetary Control (the Saby report),

thirdly, the fact that there were at least some grounds for seriously enquiring whether the sanction imposed was proportionate to the allegations made against him.

25 As regards the requirement of urgency, the European Parliament observes that in principle pecuniary damage cannot be regarded as irreparable or even as difficult to repair since, as the Court has repeatedly held, it may be made good by financial

compensation at a later date. Contrary to what was the case during the previous proceedings for an interim order, the applicant has not shown that there are special circumstances justifying a departure from that case-law.

26 As regards the applicant's argument that there is no urgency as far as the European Parliament is concerned, the European Parliament considers that the question is not whether it may wait even longer but whether the applicant has an urgent interest in obtaining the suspension of operation of the measure, which, in its view, he has not shown. The length of the disciplinary proceedings was in no way prejudicial to the applicant; on the contrary, it was financially advantageous to him, since his downgrading did not take effect until 1 February 1988 and not on 15 June 1984 as originally planned. The European Parliament considers, however, that the suspension of the procedure would be prejudicial to it; the applicant's arguments would mean automatically suspending any disciplinary sanction having pecuniary consequences, which could therefore detract from the significance and effectiveness of disciplinary proceedings.

27 As regards the existence of grounds establishing a prima facie case for suspending the operation of the contested decision, the European Parliament confines itself to stating in particular that:

(i) the contested decision was not adopted out of time;

(ii) the applicant cannot rely on a decision to grant him a final discharge since such a discharge was expressly refused in respect of the periods which are the subject of disciplinary proceedings;

(iii) the Saby report was never approved, either by the Committee on Budgetary Control or by the Full Assembly;

(iv) the proceedings were conducted in a reasonable period having regard to the complexity of the matter and the seriousness of the charges against the applicant;

(v) the proceedings are not invalidated by any major procedural irregularity or by any infringement of the rights of the defence;

(vi) no evidence of a misuse of power has been adduced;

(vii) the sanction is proportionate to the seriousness of the charges.

28 According to Article 185 of the EEC Treaty, actions brought before the Court are not to have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended. It may also prescribe any other necessary interim measure.

29 According to Article 83 (2) of the Rules of Procedure of the Court, suspension of operation and interim measures are subject to the existence of circumstances giving rise to urgency and grounds establishing a prima facie case for such measures.

30 The Court has consistently held that the urgency of an application for interim measures, as referred to in Article 83 (2) of the Rules of Procedure, must be assessed in relation to the necessity for an order granting interim relief in order to prevent serious and irreparable damage to the party requesting the interim measure (see for example the Order of 6 February 1986 in Case 310/85 R *Deufil GmbH & Co. KG* v *Commission* [1986] ECR 537).

31 In principle, purely pecuniary damage cannot be regarded as being irreparable or even difficult to repair if it may be made good at a later date by means of financial compensation, as the Court has repeatedly held (Order of 17 September 1974 in Case 62/74 R *Vellozzi* v *Commission* [1974] ECR 895; Order of 22 May 1980 in Case 33/80 R *Albini* v *Council and Commission* [1980] ECR 1671; Order of 3 July 1984 in Case 141/84 R *de Compte* v *Parliament* [1984] ECR 2575). However, it is for the judge hearing the application for interim measures to examine the specific circumstances of each case. In that regard, he must consider those matters enabling it to be established whether the immediate application of the decision whose operation the applicant asks the Court to suspend is likely to cause the applicant irreparable damage which could not be made good if the decision were to be annulled or which, in spite of its provisional nature, would be disproportionate to the interest of the institution in question, pursuant to Article 185 of the EEC Treaty, in having its decisions applied even when they are the subject of an application to the Court (Order of 21 August 1980 in Case 174/80 R *Reichardt* v *Commission* [1980] ECR 2665).

32 The fact that the applicant had already obtained a suspension of operation in the previous interlocutory proceedings by virtue of the Order of 3 July 1984, mentioned above, cannot absolve him from the obligation to produce the evidence required for departing from the general principle laid down in Article 185 of the EEC Treaty, since a period of more than three years has elapsed since that order was made and the factual and legal circumstances in the two cases are not identical.

33 In the present case, Mr de Compte has produced in support of his application for interim measures an account of his financial commitments which he altered at the hearing on the application and in which he sets out all his necessary expenditure without, however, explaining a number of items of expenditure set out in that account.

34 The applicant has produced to the Court a certificate from SA Caisse hypothécaire de Luxembourg as evidence of a mortage loan repayable by instalments of BFR 50 000, a certificate relating to another loan from the Banque du Crédit européen in respect of which the monthly repayments are BFR 18 303 and the certificate of assignment of salary in respect of an amount of BFR 26 473, but he has not explained the origin or the purpose of those loans. At the hearing, Mr de Compte submitted documents concerning various expenses such as rent, motor fuel and car maintenance and food.

35 As regards his overall financial situation, the applicant has adduced almost no evidence; in particular, he has not produced to the Court evidence of the value of the apartments which he owns in Nice, Cagnes-sur-Mer and Conflans-Jarny or of the income which he could obtain from them. In this regard, he confines himself to general statements without adducing any proof in support of them.

36 Since the applicant has not succeeded in showing the urgency required by Article 83 (2) of the Rules of Procedure, it does not appear necessary to consider whether the factual and legal grounds relied upon could establish a prima facie case for suspending the operation of the contested decision.

37 Consequently, the application for interim measures must be dismissed.

On those grounds,

THE PRESIDENT OF THE FOURTH CHAMBER

by way of an interlocutory decision,

after hearing the views of the Advocate General,

hereby orders as follows:

(1) The application for interim measures is dismissed;

(2) Costs are reserved.

Luxembourg, 16 March 1988.

J.-G. Giraud
Registrar

G. C. Rodríguez Iglesias
President of the Fourth Chamber