# ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
29 March 2001 *

In Case T-302/00 R,

**Anthony Goldstein,** resident in Harrow, Middlesex (United Kingdom), represented by R. St. John Murphy, Solicitor,

applicant,

v

**Commission of the European Communities,** represented by P. Oliver and R. Lyal, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

APPLICATION for interim measures in the context of an action for annulment under Article 230 EC of the Commission's decision of 7 July 2000 rejecting the applicant's complaint concerning the alleged infringement of Articles 81 and 82 EC by the General Medical Council,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

## Order

### Facts and procedure

1 The applicant is a British national resident in the United Kingdom of Great Britain and Northern Ireland. He is a qualified medical doctor who has undertaken further training in rheumatology in the United Kingdom. In January 1990, he obtained a 'Certificate of Specialist Training' issued by the General Medical Council ('GMC'), the statutory regulatory body which registers doctors and exercises professional discipline over them in the United Kingdom.

2 On 10 August 1993, the applicant lodged a complaint with the Commission under Article 3 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the EEC Treaty (now Articles 81 and 82 EC) (OJ, English Special Edition 1959-1962, p. 87) in respect of certain allegedly anti-competitive rules applied by the GMC.

3 By a letter of 7 July 2000, the Commission communicated to the applicant a final decision, pursuant to Article 3(2) of Regulation No 17, rejecting his complaint concerning the alleged infringement of Articles 81 and 82 EC by the GMC ('the contested decision').

4 By application lodged at the Registry of the Court of First Instance on 21 September 2000, the applicant has brought an action seeking the annulment of the contested decision and an order that the Commission bear the costs.

5 By separate application lodged at the Court's Registry on 31 January 2001, the applicant, in accordance with Articles 242 and 243 EC, brought the present application for interim measures. He claims that the President of the Court should:

'— declare [that] the application of Community competition rules to the regulatory framework set up by Council Directive 93/16/EEC is based on an obligation of sincere cooperation between the national courts, on the one

hand, and the Commission and the Community courts, on the other, in the context of which each acts on the basis of the role assigned to it by the Treaty;

— declare [that] the contested decision sanctions the maintenance in force of an unlawful economic sector in the market for specialist medical services throughout the territory of the United Kingdom;

— declare [that] the contested decision fetters the jurisdiction of the national competition authorities and the national courts throughout the territory of the Community thereby leading to the prohibition of the dismantling of the unlawful economic sector and the prohibition of the creation of a lawful economic sector on the relevant market;

— declare [that] the contested decision appears to be a measure which lacks even the appearance of legality to the extent that it is not open to the Commission, when assessing the exercise of a right arising from a provision of Community law, namely a Council Directive, to alter the scope of the provision or to compromise the objectives pursued by it;

— order the operation of the contested decision to be suspended forthwith, until the Court has given judgment on the main application, to the extent to which the Commission conceals the Community nature and effects of the specific legal framework regulating the medical profession, in order to rob Directive 84/450/EEC of 10 September 1984 of its substance in the field of misleading

advertising of specialist medical services insofar as the Member States are deprived of all possibility of adopting combative measures against such misleading advertising by the General Medical Council in contradiction with the express intention of the Community legislature;

— order the Commission to pay the costs.'

6 The application was notified to the Commission. On 21 February 2001, the latter submitted written observations wherein it seeks an order dismissing the application and requiring the applicant to pay the costs.

7 Following the notification of the present application to the Commission, but prior to the receipt of its observations, the applicant lodged, on 14 February 2001, at the Court's Registry a further interlocutory application in respect of the main case to which this application relates. That additional application, which was not notified to the Commission, was registered with the roll-number T-302/00 R II and is the subject of a separate order adopted today.

8 Oral observations in respect of the present application were submitted on behalf of the applicant and the Commission at the interlocutory hearing before the President of the Court on 8 March 2001. The applicant was represented by Mr Peter Marks, Barrister, who had been appointed by the applicant's solicitor, Mr St. John Murphy, to represent the applicant at the hearing. During the hearing the parties' legal representatives replied to questions put by the President, who also expressly referred the applicant's counsel to the obligations incumbent upon him

and, in particular, upon Mr St. John Murphy, his instructing solicitor, under Article 41(1) of the Rules of Procedure of the Court of First Instance ('the Rules').

## Law

9 Under the combined provisions of Articles 242 EC and 243 EC and Article 4 of Council Decision No 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision No 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court of First Instance may, if it considers that the circumstances so require, order that operation of a contested measure be suspended or may prescribe any necessary interim measures.

10 Article 104(1) of the Rules specifies that an application to suspend the operation of any measure adopted by an institution is admissible only if the applicant is challenging that measure in proceedings before the Court of First Instance. Article 104(2) thereof provides that applications for interim measures must state the circumstances giving rise to the urgency and the pleas of fact and law establishing a prima facie case such as to justify the interim measures applied for. The interim measures sought must, in accordance with Article 107(3) and (4) of the Rules, be provisional inasmuch as they must not prejudge the points of law or fact in issue or neutralise in advance the effects of the decision subsequently to be given in the main action (see, *inter alia*, the order of the President of the Court of Justice in Case C-149/95 P(R) *Commission* v *Atlantic Container Line* [1995] ECR I-2165, paragraph 22, and the order of the President of the Court of First Instance of 12 December 2000 in Case T-335/00 R *Goldstein* v *Commission*, not published in the ECR, paragraph 11, confirmed, on appeal, by the President of the Court of Justice in the order of 14 February 2001 in Case C-32/01 P(R) *Goldstein* v *Commission*, not published in the ECR). They must not fall outside the scope of the final decision which the Court may reach on the main application (see, *inter alia*, the orders of the President of the Court of First Instance of 27 October 1998 in Case T-100/98 R *Goldstein* v *Commission*, not published in the ECR, paragraph 15, and, on appeal, of the President of the Court of Justice of

11 February 1999 in Case C-4/99 P(R) *Goldstein* v *Commission*, not published in the ECR, paragraph 11).

11 Article 41(1) of the Rules provides, *inter alia*, for the exclusion, by order, of lawyers whose conduct towards the Court of First Instance is incompatible with the dignity of the Court.

*The applicant's arguments*

12 In respect of the requirement that applications for interim measures state the legal grounds establishing a *prima facie* case, the applicant contends, in essence, that the contested decision is manifestly illegal. First, he asserts that it fails to satisfy the legal conditions imposed by Regulation No 17, since it distorts the clear intention of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1). Second, he alleges that the Commission wrongly ascribes to itself therein the power to deny him an effective legal remedy before a national judicial authority.

13 Regarding the supposed distortion of Directive 93/16, the applicant submits that that Directive harmonises the national laws which govern the relationship between specialist doctors and their patients and that the Community legislature thereby intended to create equivalent conditions of competition for those carrying on the profession of specialist doctor throughout the Community. He asserts, by reference to the judgment of the Court and the Opinion of Advocate General Léger in Case C-164/94 *Aranitis* [1996] ECR I-135, that the contested decision

fails to have proper regard to the legal framework established by Directive 93/16 for the regulation of the medical profession, especially as regards the conditions to be satisfied for conferring the professional title of doctor and specialist doctor and the Community nature and effects thereof. He also alleges that by defining the market for specialist medical services to include two categories of undertakings, to wit specialist doctors and specialist consultants, the contested decision applies the competition rules in a manner incompatible with the regulatory framework established by Directive 93/16.

14 As regards the denial of an effective legal remedy, the applicant claims, in substance, that the contested decision withholds from the national court having jurisdiction to apply Community competition law the power to set aside national legislative provisions which are capable of hindering, even temporarily, the application of Community law.

15 Insofar as the urgency of his application is concerned, the applicant contends, by reference to the order in Joined Cases 60/81 and 190/81 R *IBM* v *Commission* [1981] ECR 1857, that, where a decision, such as the contested decision, is so tainted by obvious and serious defects that it is manifestly devoid of any legal basis, the nature and gravity of such an illegality suffices to satisfy the requirement of urgency for the purpose of an interim-measures application. Citing the order in Case 46/87 R *Hoechst* v *Commission* [1987] ECR 1549, he submits that this is *a fortiori* the case where, as in the present case, the contested decision is not only illegal but also unconstitutional. The manifest illegality of the contested decision results from the fact that the Commission failed to cooperate in good faith with the United Kingdom Permanent Representative to the European Communities, while its unconstitutionality flows from the fact that it breaches his fundamental right to a fair trial.

*The Commission's arguments*

16 The Commission queries the applicant's interest in the outcome of the main proceedings since he has allowed his registration as a medical practitioner to lapse.

17 The Commission contends that the application is manifestly inadmissible as concerns the first four interim measures claimed by the applicant. Thus, the second and third declarations sought amount to conclusions which it might be appropriate to infer only if the contested decision were annulled in the main action. The fourth declaration sought amounts to a claim that the contested decision is manifestly unfounded; it effectively seeks the annulment, by way of an interim measure, of that decision and is, thus, outwith the scope of an interlocutory application since it would clearly prejudge the main action. Regarding the first declaration sought, it is submitted that it constitutes a banal and essentially uncontroversial statement of law that is unrelated, as it stands, to the substance of the main action.

18 As regards the fifth item of relief sought, which concerns the application for the suspension of the contested decision, the Commission contended at the hearing that it was also inadmissible as the Court has no jurisdiction in interlocutory proceedings to suspend the operation of a negative act, namely the rejection of the applicant's complaint of 10 August 1993 contained in the contested decision.

19 In the alternative, the Commission submits that, insofar as the claim for the suspension of the contested decision is not inadmissible, it is manifestly unfounded.

20 The Commission observes that, as regards the condition that a prima facie case be made out in respect of the main action, the applicant's case is based entirely on the view, expressed in various ways, that the contested decision misinterprets Directive 93/16 thereby breaching the rights which he allegedly enjoys thereunder. It maintains that his interpretation of Directive 93/16 is entirely erroneous and, consequently, that there is no prima facie case to justify the suspension sought.

21 As regards the requirement of urgency, the Commission points out that the applicant has not sought to show that he will suffer any serious or irreparable harm if the measures requested are not granted. His case rests entirely on the assertion that there exists, in effect, an exception to the rule that urgency must be shown by an applicant seeking interim measures in circumstances where the contested decision is manifestly unlawful. The Commission denies the existence of any such exception. If such an exception indeed existed, it would be necessary for the contested act to be unlawful beyond any shadow of a doubt. In the present case, it is, on the contrary, the applicant's interpretation of Directive 93/16 that the Directive establishes harmonised training requirements for medical practitioners throughout the Community that is manifestly incorrect. Even if his view of the scope of the Directive were correct, it would not affect the assessment in the contested decision that the GMC rule requiring patients to be referred to a specialist doctor by a general practitioner is not incompatible with Article 81 EC.

22 At the hearing, the Commission, whilst acknowledging the applicability of Article 41(1) of the Rules to the conduct of the applicant's solicitor, expressly invited the Court to consider whether the applicant's solicitor had fulfilled his duty as an officer of the court — a duty which the Commission submitted applied as much to the Community judicature as to United Kingdom courts — to act with due diligence and care both as regards the Court and the applicant. Reference was made to the 14 main actions lodged by the applicant prior to the main action to which the present application relates, all of which have been rejected as manifestly inadmissible or unfounded by the Court of First Instance,

to his numerous interlocutory applications in respect of each main case, all of which have also been dismissed by the President of the Court of First Instance, and to his almost systematic, but equally unsuccessful, appeal of each order adopted by the Court of First Instance or its President to the Court of Justice. In total, the Commission noted that, following the adoption, on 12 December 1995, pursuant to section 42 of the Supreme Court Act 1981 of a vexatious-litigant order against the applicant by the High Court of England and Wales, the Community judicature has, since 27 February 1996, adopted 36 orders in respect of the applicant's various main proceedings, interlocutory applications and appeals, all of which have been adverse to the applicant. In the Commission's opinion, the continued support by the applicant's solicitor of such frivolous and vexatious applications amounts to a contempt of the Community judicature.

*Findings of the President of the Court*

23 The inadmissibility of the four declarations sought by the applicant by way of interim measures in the present application (see paragraph 5 above) is clear beyond peradventure.

24 It is settled case-law that in interlocutory proceedings the judge hearing the application has no jurisdiction to order any interim measure unrelated to the claim made by the applicant in the main case. The main proceedings to which the present application relates comprise an action for annulment of a Commission decision rejecting a complaint made by the applicant that certain rules of the GMC infringe Articles 81 or 82 EC. The four declarations sought by the applicant have only an indirect, if any, connection with the form of order he is seeking in the main proceedings.

25 It is also settled case-law that the relief sought in an interim-measures application must be interlocutory and not final in nature. It must therefore be of such a nature as not to prejudge the outcome of the main proceedings. The second, third and fourth declarations sought plainly fail to satisfy this requirement.

26 Furthermore, as the Court of First Instance has already had occasion to find, in its order dismissing the first main case brought before it by the applicant against the Commission, an individual applicant has no standing under the fourth paragraph of Article 230 EC to obtain remedies which apply *erga omnes* but is, on the contrary, only entitled to relief in so far as the act whose annulment is sought is capable of bringing about a significant change in his own legal situation (see Case T-235/95 *Goldstein* v *Commission* [1998] ECR II-523, paragraph 37; order confirmed on appeal by the order of the Court of Justice of 8 July 1999, Case C-199/98 P *Goldstein* v *Commission*, not published in the ECR). The same reasoning applies to interlocutory relief. Since the first three declarations sought by way of interim measures in the present application are either incapable of specifically affecting the applicant's own legal situation or are not limited to his particular situation, they are, for this reason also, manifestly inadmissible.

27 Consequently, as regards the four declarations sought in the form of order submitted by the applicant, the present application is manifestly inadmissible. Although it is unnecessary to consider whether the application, in this respect, is so obviously inadmissible that it falls to be considered as vexatious, in the sense of seeking only to annoy the defendant, there can be little doubt that it is frivolous.

28 It follows that the application needs to be considered further only insofar as it seeks the suspension of the contested decision.

29 The admissibility of this aspect of the application is, however, challenged by the Commission on basis of doubts regarding the continuing interest of the applicant in obtaining such relief. The Commission submits that, since the applicant has apparently allowed his registration as a medical practitioner to lapse, his ongoing interest in maintaining the main action is questionable.

30 There is no information available on the case-file regarding the precise status of the applicant's registration with the GMC. It would not therefore be appropriate in the context of the present interlocutory proceedings for any view to be adopted on this matter, since it may only effectively be considered by the Court hearing the main case. Indeed, the applicant's conduct in allowing his registration to lapse, if this be the case, may be directly linked to his refusal to recognise the validity of the referral rule which is the subject-matter of the complaint whose rejection in the contested decision has given rise to the main proceedings.

31 The admissibility of the application for the suspension of the contested decision cannot therefore be excluded.

32 As regards the applicant's claim for suspension, it is apposite first to consider whether the present application satisfies the requirement of urgency.

33 No specific form of material harm has been pleaded and the applicant has not provided any information which could enable this Court to determine whether he is liable to suffer any serious or irreparable harm if the contested decision is not suspended pending the outcome of the main case. The applicant refused, in particular, to permit his legal representative to answer questions put at the

hearing regarding his present sources of professional income and, how, if at all, they have been affected by the contested decision.

34 It is clear from the applicant's submissions that, to justify the urgency of the suspension sought, he relies uniquely on the alleged non-material damage which he claims to be suffering as a result of the manifest illegality and unconstitutionality of the contested decision.

35 The applicant's submission in this respect is based on a reproduction, *mutatis mutandis*, of certain arguments advanced before the President of the Court of Justice in Joined Cases 60/81 and 190/81 R *IBM* v *Commission* [1981] ECR 1857 and in Case 46/87 R *Hoechst* v *Commission* [1987] ECR 1549. However, no order for interim measures was made in those cases and the President of the Court of Justice, clearly without taking a view on the correctness in law of the applicants' submissions, found that no obvious illegality or unconstitutionality was established (*IBM*, paragraph 7, *Hoechst*, paragraph 31).

36 In the present application, the far-reaching allegation of manifest illegality advanced by the applicant is almost entirely unsubstantiated. It is based on a particular view of the scope of Directive 93/16 which is not shared by the Commission. There is nothing in the information provided in the application that provides even a shred of support for the applicant's bald assertion that the Commission's interpretation of that Directive is so flagrantly wrong, or motivated by bad faith, that it renders the contested decision manifestly illegal. Indeed, on a preliminary examination the contested decision does not even appear to turn on any such interpretation but on an assessment of the possible applicability of Articles 81 and 82 EC to the impugned conduct of the GMC.

37 The applicant's interpretation of Directive 93/16 is based almost exclusively on a quotation from the Opinion of 11 May 2000 of Advocate General Léger in Case

C-381/98 *Ingmar GB*, not yet published in the ECR, judgment of 9 November 2000. Citing in particular paragraph 33 of the Opinion, the applicant substitutes — but without drawing the attention of the Court to the alteration — the words 'specialist doctor' for the expression 'commercial agent' and 'Directive 93/16' for 'the Directive'. However, the Directive to which the Advocate General referred was Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17). As confirmed by the Court of Justice in *Ingmar*, it is clear, especially from the second recital in the preamble to Directive 86/653, that 'the harmonising measures laid down by [that] Directive are intended, *inter alia*, to eliminate restrictions on the carrying-on of the activities of commercial agents, to make the conditions of competition within the Community uniform and to increase the security of commercial transactions' (paragraph 23). The reference to *Ingmar* thus provides no support for the view that the Commission's more limited reading of the scope of Directive 93/16 is so obviously incorrect as to constitute a manifest error.

38 Consequently, without its being necessary to decide whether the applicant is correct in asserting that, in cases of patent illegality, an exception exists to the normal rule that in interlocutory proceedings the condition of urgency must be established by reference to the personal circumstances of the applicant, it is clear that the contested decision in the main case is neither manifestly illegal nor unconstitutional.

39 Since the applicant has not referred to any grave or irreparable harm that would be occasioned to him personally by the maintenance in force of the contested decision pending the outcome of the main action, the present application must be rejected without there being any need to consider whether it satisfies the further requirement of demonstrating the existence of a prima facie case in the main action that the contested decision should be annulled. It is therefore unnecessary to consider the Commission's submission that the Court would, even if the requirements of urgency and the existence of a prima facie case were satisfied, have no jurisdiction to order the suspension of a negative decision such as that contained in the contested decision.

40 As regards the Commission's submission that the Court enjoys an inherent power to penalise lawyers who insist on bringing frivolous and vexatious actions before it, it is unnecessary to consider whether such a power exists in the present application. However frivolous, if indeed not vexatious, the present application may be as regards the four heads of declaratory relief claimed, the genuineness of the applicant's interest in seeking the suspension of the contested decision cannot readily be called into question. It is nevertheless appropriate to point out that the conduct of a lawyer who persists in bringing, in respect substantially of the same facts, a series of manifestly inadmissible and/or unfounded applications both for interim and final relief, particularly where those applications almost invariably contain unsubstantiated assertions of manifest illegality against the contested decisions of the Community institution concerned, bad faith or dereliction of duty on the part of that institution, clearly constitutes an abuse of procedure. In that respect, the Court would draw specific attention to Article 41(1) of the Rules under which:

'Any adviser or lawyer whose conduct towards the Court of First Instance, the President, a Judge or the Registrar is incompatible with the dignity of the Court of First Instance, or who uses his rights for purposes other than those for which they were granted, may at any time be excluded from the proceedings by an order of the Court of First Instance; the person concerned shall be given an opportunity to defend himself

The order shall have immediate effect.'

41 Whilst it is unnecessary for the purposes of dismissing the present application to invoke the power conferred by Article 41(1) of the Rules, if further applications for interim measures of a frivolous and/or vexatious nature, or which contain sweeping, but unsubstantiated, allegations of manifest illegality, bad faith or

other similarly scandalous pleas, continue to be lodged on behalf of the present applicant concerning the subject-matter of the main case, the Court will consider exercising the powers conferred upon it by Article 41(1).

42 It follows from all of the above that the present application for interim measures must be dismissed in its entirety.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **The application for interim measures is dismissed.**

2. **Costs are reserved.**

Luxembourg, 29 March 2001.

H. Jung

Registrar

B. Vesterdorf

President