ORDER OF THE PRESIDENT OF THE COURT
30 JUNE 1983 [1]

Henri de Compte
v European Parliament

Case 122/83 R

Application for the adoption of interim measures — Suspension of operation — Conditions for granting — Application for the suspension of disciplinary proceedings on the grounds of alleged infringement of the rights of the defence — Opportunity for the person concerned to raise the alleged procedural irregularities before the Disciplinary Board — Suspension of the proceedings not justifiable

(Article 83 (2) of the Rules of Procedure)

In Case 122/83 R

HENRI DE COMPTE, former Head of the Treasury and Accounts Division and an accounting officer at the European Parliament, represented by Gaston Vogel, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 5 Rue C.-M.-Spoo,

applicant,

v

EUROPEAN PARLIAMENT, represented by M. Peter, Head of the Legal and Administrative Questions Division, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 Côte d'Eich,

defendant,

1 — Language of the Case: French.

APPLICATION to suspend disciplinary proceedings brought against the applicant,

THE PRESIDENT OF THE SECOND CHAMBER, acting as President of the Court pursuant to Article 96 (1), the second paragraph of Article 85 and the second paragraph of Article 11 of the Rules of Procedure,

makes the following

ORDER

Facts and background to the dispute

1. The background to the present case is described in the orders made on 22 November 1982 and 13 December 1982 in Case 293/82 R between the same parties.

2. It appears from the file on the case that, following those orders, the Parliament decided to annul the first disciplinary proceedings brought against the applicant and to institute new proceedings against him. Mr de Compte was accorded a prior hearing in accordance with the second paragraph of Article 87 of the Staff Regulations on 28 January 1983. Following that hearing, the Parliament formulated its complaints against him and once again referred the matter to the Disciplinary Board.

3. The statements of the parties show that the constitution of the Disciplinary Board is no longer in dispute. However, by a letter of 20 May 1983 the applicant asked the Parliament to suspend the disciplinary proceedings until the outcome of an administrative inquiry ordered by the Committee on Budgetary Control was known. That request was rejected by the President of the Parliament on 7 June 1983 in a memorandum in which it was emphasized that the work of a parliamentary committee was independent of procedures laid down by the Staff Regulations on disciplinary matters.

4. On 29 June 1983 the applicant, who had been called upon to appear before the Disciplinary Board on 1 July 1983, applied for the annulment, on the one hand, of the disciplinary proceedings in so far as they related to complaints based on provisions of a regulation which, having been repealed, no longer existed and, on the other hand, of the above-mentioned memorandum by which the President of the Parliament dismissed the applicant's claim for the suspension of

the disciplinary proceedings until the outcome of the administrative inquiry was known. In a further submission dated 30 June 1983 the applicant also complained that the Parliament had forbidden him any access to the accounts. He considers that to continue with disciplinary proceedings under such conditions would seriously prejudice the rights of the defence.

5. At the time the main action was brought, the applicant also submitted an application pursuant to Article 83 of the Rules of Procedure for the suspension of the disciplinary proceedings then in progress.

6. The parties presented oral argument on 30 June 1983 and this order was delivered orally at the end of the sitting.

Decision

Admissibility

7 The application for the adoption of interim measures calls for certain preliminary observations regarding its admissibility. It seems unlikely that the memorandum of 7 June 1983, by which the President of the Parliament dismissed the applicant's claim for suspension of the disciplinary proceedings, may be regarded as a measure which may be contested in accordance with Article 91 of the Staff Regulations. That memorandum forms part of disciplinary proceedings brought by the Parliament and it is doubtful whether the Court may intervene in the conduct of those proceedings before a definitive decision is reached on the substance of the case. In that regard, it is appropriate to refer to the Order of the President of the Court of 7 July 1981 and to the judgment of the Court of 11 November 1981 in Joined Cases 60 and 190/81 *IBM* v *Commission* ([1981] ECR 1857 and 2639) which present certain similarities with the present case from the procedural point of view, notwithstanding the fact that the subject-matter was different.

8 However, in view of the fact that the solution to this problem is bound up with the assessment of the admissibility of the main action and that the present case can be dealt with on the basis of other considerations, it does not appear necessary to deal with the question of admissibility in advance.

The requested suspension

9 Under Article 83 (2) of the Rules of Procedure, it is incumbent on the applicant to state the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.

10 In the circumstances the urgency cannot be denied since the applicant has been called upon to appear before the Disciplinary Board shortly and it is in his interest to clarify his legal position before that date.

11 It is therefore necessary to examine whether, *prima facie*, the application for suspension of the disciplinary proceedings appears to be justified.

12 The applicant states, on the one hand, that the rights of the defence have been unlawfully obstructed in so far as the Parliament has forbidden him access to the accounts division and has initiated disciplinary proceedings before the results of the administrative inquiry are known and, on the other hand, that the disciplinary proceedings have no legal basis since they are based on a regulation which, having been repealed, is non-existent.

13 In that regard it is to be noted that the applicant will be able to put his defence to the Disciplinary Board and that, at this stage, it is for the Board to consider whether it is relevant and well founded. Moreover, an appeal against any decision which may be adopted on completion of the disciplinary proceedings may be made to this Court in accordance with the provisions of the Staff Regulations.

14 It therefore appears that the rights of the defence are safeguarded because the applicant enjoys sufficient legal protection within the framework of the disciplinary procedure provided for by the Staff Regulations and that there is therefore no justification for the interim measure for which he has applied.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER, acting as President of the Court pursuant to Article 96 (1), the second paragraph of Article 85 and the second paragraph of Article 11 of the Rules of Procedure,

hereby orders as follows:

1. **The application for suspension of the disciplinary proceedings initiated by the European Parliament against the applicant is dismissed;**

2. **The costs are reserved.**

Luxembourg, 30 June 1983.

J. A. Pompe
Deputy Registrar

P. Pescatore
President of the Second Chamber
acting as President