Case 193/87 R

Henri Maurissen
v
Court of Auditors of the European Communities

(Officials — Suspension of the operation of a measure)

Order of the President of the Court (Third Chamber), 10 July 1987 3445

Summary of the Order

Application for interim measures — Suspension of the operation of a measure — Interim measures — Conditions for granting — Serious damage which would be difficult to repair (Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT OF THE THIRD CHAMBER
OF THE COURT
10 July 1987 *

In Case 193/87 R

Henri Maurissen, an official of the Court of Auditors of the European Communities, represented and assisted by J.-N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Y. Hamilius, avocat at the Court of Appeal of Luxembourg, 11 boulevard Royal,

applicant,

* Language of the Case: French.

V

Court of Auditors of the European Communities, represented by Michaël Becker and Marc Ekelmans, acting as Agents, with an address for service in Luxembourg at the seat of the Court of Auditors, 29 rue Aldringen,

defendant,

APPLICATION for the suspension, as an interim measure, of the operation of two decisions of the President of the Court of Auditors, of which the first, dated 17 March 1987, instructed the Court's internal messengers for the time being not to assist in circulating trade-union news sheets, and the second, dated 31 March 1987, refused to allow representatives of the Union syndicale (European Public Service Union) time off work in order to attend meetings of the Consultation Committee,

THE PRESIDENT OF THE COURT (Third Chamber)

acting under Articles 9 (4) and 96 of the Rules of Procedure, makes the following

Order

1 In a leaflet dated 26 February 1987 on the intentions of the Court of Auditors with regard to the estimates for the 1988 financial year, the Union syndicale, Luxembourg, condemned the increase in the number of temporary staff. According to the leaflet, such an increase was likely not only to devalue the European public service but also to threaten the independence of the Court and to compromise its role as the 'financial conscience of Europe'.

2 On 17 March 1987 the President of the Court of Auditors sent to Mr Maurissen, the only official of the Court whose name appeared amongst the members of the Executive Committee of the Union syndicale listed at the foot of the leaflet, a letter condemning the leaflet in form and in substance and informing Mr Maurissen that he had decided for the time being to prohibit the internal messengers from distributing trade-union news sheets, so that they would in future have to be distributed either through the Staff Committee or by the trade unions themselves alone.

3 At the same time, the General Secretary of the Union syndicale, Luxembourg, informed the President of the Court of Auditors on 11 March 1987 that a trade-union delegation was to be set up at that institution and requested that its members be given time off work should they be appointed to attend meetings with the Commission of the European Communities to discuss staff matters: the meetings in question were mainly those of the Consultation Committee, which the Council established in June 1981 to ensure that it would be fully aware of the circumstances when it adopted decisions on staff matters and whose members included staff representatives appointed by the trade unions and professional organizations as well as representatives of the Member States and the institutions.

4 In his reply dated 31 March 1987 the President of the Court of Auditors noted that a trade-union delegation was to be set up and informed the General Secretary of the Union syndicale that he could not agree to his request for officials to be given time off work, for the following reason:

'Although Article 24a of the Staff Regulations of Officials of the European Communities grants all officials the right of association, only the duties undertaken by members of the Staff Committee and by officials appointed by the Committee to organs set up under the Staff Regulations or by the institution are deemed by those Regulations to be part of their normal service in their institution.'

Meanwhile Mr Maurissen's application for special leave in order to attend a meeting of the Consultation Committee in Brussels had been refused in a letter dated 25 March 1987 from the Head of the Division for Administration and Personnel at the Court, on identical grounds.

5 By an application lodged at the Registry of the Court of Justice on 22 June 1987, Mr Maurissen brought an action for the annulment of the abovementioned decisions adopted by the President of the Court of Auditors on 17 March 1987 and 31 March 1987.

6 By an application for interim measures lodged on the same day pursuant to Article 91 (4) of the Staff Regulations, the applicant seeks the suspension of those decisions until the Court has given judgment in the main action. He further requests the Court to order the Court of Auditors, first, to give instructions for the distribution to all members of staff of any leaflet, notice or information sheet issued by the organizations representing the staff and, secondly, to permit the

applicant, within the framework of his duties, to attend any meetings of the Consultation Committee.

7 In support of his requests, Mr Maurissen makes two submissions. First, as regards the suspension of the decision of 17 March 1987, he claims that in the light of Article 24a of the Staff Regulations the administration was in breach of its duty to afford assistance to officials: that duty requires the institutions to give instructions for the distribution to members of staff of any information sheet issued by the trade unions representing them, so as to enable those unions to exercise fully their rights as confirmed by the Court of Justice. The application for the suspension of the decision of 31 March 1987 is based on a breach of the principle of equal treatment for officials, inasmuch as all the other institutions permit the trade-union members representing their staff to take time off work, and on the fact that the Court of Auditors sends members of staff on mission to represent it as an institution at meetings of the Consultation Committee, whilst the contested decision deprives its staff of any representation.

8 In order to establish the urgency of the interim measures requested, the applicant points out that the Council decision establishing machinery for consultation demonstrates that the trade unions and staff associations are not only entitled to attend meetings of the Consultation Committee but are actually obliged to do so. The Consultation Committee was convened on 27 March and 19 June 1987 to discuss the special crisis levy introduced by Article 66a of the Staff Regulations; further meetings on the matter are expected to take place at regular intervals. It is all the more essential for the staff of the Court of Auditors to be represented since, in its judgment of 3 July 1985 in Case 3/83 *Abrias and Others* v *Commission* [1985] ECR 1995, the Court underlined the part played by the most representative trade unions of the staff of the Communities in connection with the special crisis levy.

9 The Court of Auditors contends that the application should be dismissed as inadmissible. In the first place, the decisions challenged by Mr Maurissen do not adversely affect him: the decision of 17 March 1987 is not such as to affect his position under the Staff Regulations, whilst the decision of 31 March 1987 is addressed to the General Secretary of the Union syndicale. In the second place, in the absence of any rules common to all the institutions or specific to the Court of

Auditors, the latter cannot be forced to permit the trade unions to use the internal messenger service or to take time off work, either by virtue of the duty to assist officials or by application of the principle of equal treatment.

10 The Court of Auditors further argues that the precondition for interim measures to be granted, namely that they should be urgent and necessary to prevent damage, is not satisfied in this case. The decision of 17 March 1987 cannot give rise to any irreparable damage since the trade-union documents can be, and indeed are being, distributed through channels other than the internal messenger service. Furthermore, there is nothing to prevent the applicant from taking annual leave in order to attend the meetings of the Consultation Committee and he could be given further leave if the Court of Justice were to grant the application in the main action and annul the decision of 31 March 1987.

11 In order to give a decision on this application, it should be recalled that Article 185 of the Treaty provides that actions brought before the Court of Justice do not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested decision be suspended.

12 Under Article 83 (2) of the Rules of Procedure of the Court, an application to suspend the operation of a measure or for the adoption of any other interim measure cannot be granted unless there are circumstances giving rise to urgency requiring that such measures be adopted in order to avoid serious and virtually irreparable damage, and also grounds establishing a prima facie case for those measures.

13 It is in the light of those provisions and the decisions to which they have given rise that the claims in the application should be considered.

14 It is unnecessary to consider whether the submissions put forward by Mr Maurissen are such as to justify granting him the measures applied for, since it must be held that the conditions relating to urgency and serious and virtually irreparable damage are not satisfied in this case.

15 In the first place, so far as the request for the suspension of the operation of the decision of 17 March 1987 is concerned, it should be noted that in his application the applicant adduces no evidence to show that that condition is satisfied. The arguments which he puts forward relate solely to the urgent need to make good the damage caused to him not by the application of the decision of 17 March 1987 but by the immediate application of the decision of 31 March 1987 refusing him time off work. He does not, however, explain how the refusal to allow the internal messenger service to distribute trade-union information sheets could cause him serious and virtually irreparable damage, nor why there is an urgent need to reverse that refusal.

16 Furthermore, it is apparent from the other documents before the Court and from the hearing that the contested decision of the President of the Court of Auditors does not prevent the distribution of trade-union documents to members of staff, since it is open to the trade unions to make other arrangements for distributing them — in particular by using their own officials or members.

17 In the second place, so far as the suspension of the operation of the decision of 31 March 1987 is concerned, it is apparent from the observations submitted in its defence that the Court of Auditors has not prohibited Mr Maurissen from attending the meetings of the Consultation Committee, nor does it intend to do so in the future. The defendant's refusal to grant Mr Maurissen's request for time off work does not, therefore, prevent him from taking part in those meetings, since he is free to deduct the requisite time from his annual leave. If in the main action the Court of Justice were to annul the contested decision of 31 March 1987, there would be no difficulty in reallocating to him the leave taken.

18 Although the applicant argued at the hearing that the amount of leave available to him for that purpose had been substantially reduced by the fact that he was attending courses and sitting examinations at the Centre universitaire, Luxembourg, he has not established that that factor, for which he is in any event himself responsible, would preclude his participation in the work of the Consultation Committee. Consequently, it must be held that the contested decision could not cause the applicant serious and virtually irreparable damage such as to justify its suspension.

19 It follows from the foregoing considerations that the application for interim measures must be dismissed.

On those grounds,

THE PRESIDENT OF THE THIRD CHAMBER OF THE COURT

by way of interim 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, 10 July 1987.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber