ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

12 December 1995 *

In Case T-203/95 R,

Bernard Connolly, an official of the Commission of the European Communities, resident at Everberg (Belgium), represented by Jacques Sambon and Pierre-Paul van Gehuchten, both of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Reinsheim,

applicant,

v

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, and Julian Currall, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for interim measures prohibiting the Commission from communicating to the press information concerning the disciplinary proceedings brought against the applicant whilst those proceedings are in progress as well as information concerning his career, personality, opinions or health, and ordering the Commission to take all necessary measures to ensure that no such information is made public, and, secondly, ordering the Commission to pay the applicant a periodic penalty of BFR 100 000 for every breach committed as from the date of the interim order,

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

makes the following

Order

Facts and procedure

1 By application lodged at the Registry of the Court of First Instance on 27 October 1995, the applicant brought an action under Article 91(4) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') for annulment of the Commission's decisions to bring disciplinary proceedings against him, suspend him from his duties and refer the matter to the Disciplinary Board, dated respectively 6 September 1995, 27 September 1995 and 4 October 1995, and for an order requiring the Commission to pay him the sum of BFR 750 000 in damages.

The applicant also requests the Court of First Instance to order publication of the operative part of the judgment, at the Commission's expense, in three newspapers.

2 By a separate document, lodged at the Registry of the Court of First Instance on the same date, the applicant applied for interim measures under Article 91(4) of the Staff Regulations requesting, first, an order prohibiting the Commission from communicating to the press information concerning the disciplinary proceedings brought against the applicant whilst those proceedings are in progress, as well as information concerning his career, personality, opinions or health, and ordering the Commission to take all necessary measures to ensure that no such information is made public, and, secondly, an order requiring the Commission to pay him a periodic penalty of BFR 100 000 for every breach found to have been committed as from the date of the order applied for.

3 The Commission presented its observations on the application for interim measures on 9 November 1995.

4 Before examining whether this application for interim measures is well founded, the Court will recall the background to the dispute, as it emerges from the documents lodged by the parties.

5 The applicant, a Commission official in Grade A 4, Step 4, is the head of the 'EMS, national and Community monetary policies' unit in Directorate D 'Monetary matters' of the Directorate-General of Economic and Financial Affairs.

6 On 24 April 1995 Mr Connolly submitted a request for three months' leave on personal grounds, stating as his reasons: (a) to assist his son, during the school

holidays, to prepare for entrance to a United Kingdom university, (b) to allow his elderly father to spend some time with the family, and (c) to give himself some time for reflection on matters of economic theory and policy and to 're-establish acquaintance with the literature'. The Commission granted him leave by decision of 2 June 1995.

7 By letter of 18 August 1995, Mr Connolly applied to be reintegrated into Commission service at the end of his leave on personal grounds. The Commission reinstated him in his post, as from 4 October 1995, by decision of 27 September 1995.

8 During his leave on personal grounds, Mr Connolly published a book entitled *The Rotten Heart of Europe. The Dirty War for Europe's Money*, without requesting prior authorization under the second paragraph of Article 17 of the Staff Regulations.

9 At the beginning of September, and particularly between 4 and 10 September 1995, a series of articles concerning the book was published in the European press, and particularly in the United Kingdom press.

10 By letter of 6 September 1995, Mr De Koster, the Director-General of Personnel and Administration, in his capacity as appointing authority, informed the applicant that disciplinary proceedings were being brought against him on the grounds that he might be in breach of his obligations under Articles 11, 12 and 17 of the Staff Regulations.

11 The appointing authority invited the applicant to two hearings, in accordance with the first paragraph of Article 87 of the Staff Regulations, which took place on 12 and 26 September 1995. The applicant produced a written statement at those two hearings and refused to answer questions put to him.

12 By decision of 27 September 1995, the appointing authority suspended Mr Connolly from his duties as from 3 October 1995.

13 The matter was referred to the Disciplinary Board on 4 October 1995.

14 By letter of 18 October 1995, the applicant lodged a complaint with the appointing authority under Article 90(2) of the Staff Regulations against its decisions to bring disciplinary proceedings and to refer the matter to the Disciplinary Board, and against the decision of 27 September 1995 to suspend him from his duties. In the same letter, denouncing statements published in the press concerning his honour, health and professional reputation, the applicant also argued that the disciplinary proceedings brought against him were 'brought in a climate which, under Article 24 of the Staff Regulations, it is precisely the duty of the Commission to prevent'. He therefore requested the Commission to assist him in any action against those responsible for threats, insults, defamatory statements and conduct incompatible with any initiative from a reasonably active administration.

Law

15 Under the combined provisions of Articles 185 and 186 of the EC Treaty and Article 4 of Council Decision 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 93/350/Euratom, ECSC, EEC of 8 June 1993

(OJ 1993 L 144, p. 21) and by Council Decision 94/149/ECSC, EC of 7 March 1994 (OJ 1994 L 66, p. 29), the Court of First Instance may, if it considers that circumstances so require, order that application of contested acts be suspended or prescribe any necessary interim measures.

16 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications for interim measures as envisaged under Articles 185 and 186 of the Treaty must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. Such measures must be provisional in the sense that they must not prejudge the decision on the substance of the case (see, most recently, the Order of the President of the Court of First Instance in Case T-168/95 R *Eridania and Others* v *Council* [1995] ECR II-2817, paragraph 14).

Admissibility

17 The Commission's main argument is that this application for interim measures is inadmissible, firstly on account of the connection between the application and certain claims in the main action which it argues are manifestly inadmissible, and secondly on the ground that the Court lacks jurisdiction.

18 In its plea based on the connection between the main action and the application for interim measures, the Commission argues that Mr Connolly's main action is partially inadmissible because it seeks annulment of three Commission decisions of which two — namely those contained in the notes of 6 September 1995 and 4 October 1995 — are provisional in nature and therefore not open to challenge. The main action is therefore admissible only in so far as it seeks annulment of the decision of

27 September 1995 suspending the applicant from his duties. It follows that this application for interim measures is inadmissible, since, according to the Commission, it has no connection with the application for annulment of the decision to suspend Mr Connolly, but refers instead to the other claims in the main action, which are manifestly inadmissible.

19 The Court finds that, prima facie, some of the claims for annulment raised in the main action are manifestly inadmissible. The only measure adversely affecting the applicant, challenged by him in that action, is the suspension decision of 27 September 1995, which is not in fact referred to in the application for interim measures. The other Commission decisions of which the applicant seeks annulment in the main action, namely the decision to bring disciplinary proceedings against him and the decision to refer the matter to the Disciplinary Board, dated 6 September 1995 and 4 October 1995 respectively, are preparatory measures adopted in the context of disciplinary proceedings and, prima facie, are not therefore open to challenge (see, in particular, the judgment of the Court of First Instance in Joined Cases T-32/89 and T-39/89 *Marcopoulos* v *Court of Justice* [1990] ECR II-281, paragraph 21). It follows that, in so far as it is connected with the claims for annulment of those latter decisions, the application for interim measures ought to be dismissed.

20 However, in this case the Court finds that the application for interim measures is connected with the claim for compensation, also brought by Mr Connolly in the context of the same main action. The latter claim, like the application for interim measures, concerns material and non-material damage which Mr Connolly alleges he has suffered following the publication in the press of various information and comments concerning not only the disciplinary proceedings against him but also his person, his health and his professional abilities.

21 Such a claim for compensation may also give rise to doubts as to its admissibility. It is settled case-law that, in order to be admissible, an action in which an official claims compensation for damage he considers he has suffered by reason of certain

acts of an institution that do not constitute acts adversely affecting him must necessarily be preceded by an administrative procedure in accordance with Articles 90 and 91 of the Staff Regulations. That procedure comprises two stages, first a request and then a complaint against the express or implied rejection of that request (see, in particular, the judgment of the Court of First Instance in Case T-84/91 *Meskens* v *Parliament* [1992] ECR II-2335, paragraph 33).

22 In this case, the applicant in his claim for compensation refers to authorized and unauthorized statements by the Commission and its officials, which, he says, cast doubt on his honour and professional reputation, and argues that there has been a breach of the duty of assistance laid down by Article 24 of the Staff Regulations. However, before bringing that claim before the Court of First Instance, the applicant does not appear to have made any express request to the Commission pursuant to Article 90(1) of the Staff Regulations claiming compensation for the damage he considers he has suffered or might suffer as a result of those statements. In his letter to the Commission of 18 October 1995, the applicant merely made an express request for the Commission's assistance pursuant to Article 24 of the Staff Regulations in taking any action against those responsible for statements or conduct incompatible with, in particular, the principle of sound administration. Concerning more particularly the question of compensation, the documents before the Court show that Mr Connolly referred to the damage mentioned above only in his letter of 18 October 1995, in which he argued that the information published in the press concerned his health and his personal and professional reputation. In that letter, he merely referred to the 'seriously damaging' character of such actions and reserved his rights in respect of any future action for compensation. However, whatever doubts there may be as to the admissibility of the claim for compensation, which will be resolved by the Court in the main action, that claim does not prima facie appear to be manifestly inadmissible in the context of these proceedings. It follows that the application for interim measures cannot be dismissed on those grounds.

23 In any event, taking into account the specific context of this case, it seems reasonable to accept that the applicant has a legitimate interest in having his application for interim measures examined by this Court, given that that application is

connected with a separate claim for compensation for the damage which he alleges he has suffered following acts which, prima facie, are not capable of being challenged in an action for annulment, and that the application seeks to prevent future damage. In any event, the fact that the applicant may have failed to follow the pre-litigation administrative procedure in this case should not deprive him of the possibility of obtaining a measure to prevent future damage which might be serious and irreparable. It should be emphasized in that respect that, in the Community system governing contentious proceedings, the purpose of the interim relief procedure is precisely to allow the immediate adoption of provisional measures which are justified by urgency. That interpretation is confirmed by Article 91(4) of the Staff Regulations, which expressly allows derogation from precisely those conditions for admissibility which relate to compliance with the pre-litigation procedure, by allowing officials to bring an action before the Community court immediately after lodging a complaint with the appointing authority, when the application in that action is accompanied by an application for interim measures.

24 In its second plea of inadmissibility, the Commission argues that the application for interim measures constitutes a request for an injunction, which is in itself inadmissible since the Court of First Instance does not have jurisdiction to issue directions to a Community institution. Moreover, the Commission argues, the interim measures applied for relate to the obligation to respect professional confidentiality, which is already provided for by the Staff Regulations, and cannot therefore have any substance independently of that pre-existing obligation.

25 This second plea must also be rejected. Article 186 of the Treaty confers jurisdiction on the Community judicature to prescribe any necessary interim measures and, in accordance with Article 36 of the Statute (EC) of the Court of Justice, such jurisdiction includes the power to issue injunctions which are provisional in character and do not in any way prejudice the decision of the Court on the substance of the case.

Moreover, contrary to the Commission's argument, the fact that, in defence of his rights, the applicant asks the administration to comply with its obligations under

the relevant rules in force (such as compliance, at every level, with the duty not to disseminate confidential information concerning staff) does not mean that the measure requested can be described as a 'direction' in the strict sense of the word and its adoption thus be regarded as being outside the jurisdiction of the Community judicature. It is merely a reminder to observe rules of law which cannot, as such, be regarded as a form of direction since complying with the relevant rules is the normal way for the administration to act.

When hearing an application for interim measures, the Court may resort not only to various forms of intervention to meet the specific requirements of each case but also to the simple expedient of reminding a party to comply with existing provisions. Such a reminder may well be an appropriate remedy, complying with the principles which govern the procedure for interim relief and capable of provisionally ensuring appropriate protection of the applicant's rights.

The requirement for a prima facie case and for urgency

Arguments of the parties

26 In support of his application for interim measures, the applicant makes a single plea in law, alleging infringement of Article 24 and the second paragraph of Article 87 of the Staff Regulations, of the provisions of Annex IX thereto, especially the second paragraph of Article 8, and of the principles expressed in the note of 24 November 1983 by the President of the Commission and the Commissioner responsible for personnel matters on the Commission's disciplinary policy, on the ground that all those provisions require disciplinary proceedings to be confidential.

27 The applicant complains that the Commission circulated his statement dated 12 September 1995 within the institution and communicated all the stages of the disciplinary proceedings to the press. In particular, the Commission's spokesman revealed that in the disciplinary proceedings a decision would be taken with regard to the applicant after the Disciplinary Board had given its opinion. He had also stated that 'the question must be asked whether you have a place in this institution' and that 'if I had all these fears, I would hand in my resignation this afternoon'. In addition, Mr Connolly points out that, according to *The Times* newspaper of 8 September 1995, the President of the Commission stated that 'there was no place in his institution for senior employees who were so vehemently opposed to everything the Union stood for'. The applicant also produced a copy of the weekly publication *European Voice* of 5 October 1995, containing a brief article repeating certain statements made by the Commissioner responsible for personnel matters. The latter stated, emphasizing that his statements were made in a purely personal capacity, that he considered the contents of Mr Connolly's book to be prejudicial to the interests of the Community, adding, nevertheless, that the Commission as in institution should not take part in the discussions caused by the book's publication, since Mr Connolly's conduct was to be examined in disciplinary proceedings.

Nor, the applicant argues, has the Commission taken any measures to prevent the dissemination and publication by its staff of a series of facts concerning not only the disciplinary proceedings but also his person, his health and his professional reputation.

28 The applicant argues that that attitude by the Commission has caused him serious damage. First, the information referred to above and other information concerning him and published in the press has seriously called in question his honour and reputation, both personal and professional. Secondly, the effect of such a press campaign is to reduce the Disciplinary Board's freedom of assessment and incline it towards finding that he should be disciplined.

29 In Mr Connolly's submission, there is a risk that the damage which he has already suffered may be considerably aggravated if that press campaign continues. The urgency of the measures requested thus arises from the need to prevent serious and irreparable damage, particularly in view of the fact that the disciplinary proceedings concerning him have not yet been completed.

30 The Commission replies that the 'press campaign' to which the applicant refers consists in fact of only three statements, made by the President, the Commissioner responsible for personnel matters and the Commission's spokesman, and that, moreover, those statements were not official.

The Commission's spokesman had stated only that the disciplinary decision was a matter for the Commission after obtaining the opinion of the Disciplinary Board, and his statements had merely indicated that sanctions might be taken against Mr Connolly. The fact that the spokesman maintained that the point of view expressed in the book was not compatible with Commission policy had no relevance whatever as far as disciplinary proceedings were concerned. As regards the comments of the President of the Commission, reported in *The Times* of 8 September 1995, the Commission states that he merely intended to observe that a person whose opinions were fundamentally opposed to those of his employer and who stated them publicly should consider whether it was appropriate for him to resign. Similarly, in the interview which the Commissioner responsible for personnel matters granted to *European Voice*, the Commissioner made a point of distinguishing between his personal point of view and the position of the Commission in relation to the disciplinary proceedings in progress.

31 The Commission stresses, moreover, that all the other statements which might harm Mr Connolly's reputation were unauthorized comments for which the Commission is in no way responsible.

32 As for the urgency of the measures requested, the Commission replies that, contrary to what Mr Connolly claims, he has not so far suffered any damage. Firstly, the comments referred to, being statements made outside the institution, cannot have any influence on the disciplinary proceedings, which are internal to the Commission and are conducted independently of its activities of a wholly political nature. Secondly, since the allegedly defamatory comments cannot be regarded as Commission statements, there cannot be any urgency in ordering the Commission to put a stop to them. On the strength of all those considerations, the Commission argues that there is no evidence to suggest any risk of serious and irreparable damage and that there is therefore no cause to adopt the interim measures requested.

Findings of the Court

33 In his submissions, the applicant essentially makes two complaints: the confidentiality of the disciplinary proceedings was not kept and the Commission did not fulfil its duty to provide assistance.

34 The Staff Regulations and the principles expressed in the note of 24 November 1983, invoked by the applicant, do not prima facie prohibit the administration from informing the press of the commencement of disciplinary proceedings or the adoption of a suspension measure.

35 However, the obligation to respect professional confidentiality, as laid down by the first paragraph of Article 17 of the Staff Regulations, requires every official to 'exercise the greatest discretion with regard to all facts and information coming to his knowledge in the course of or in connection with the performance of his duties'. Moreover, by virtue of its duty to have due regard to the interests of officials and of the principle of sound administration, the institution in question is required to prevent an official from becoming the subject of statements which might tarnish his professional honour (see the judgment of the Court of Justice in Case 53/72

Guillot v *Commission* [1974] ECR 791, paragraph 5). In principle, therefore, the administration must avoid giving the press information concerning disciplinary proceedings which might damage the official subject to those proceedings and take all necessary measures to prevent any form of dissemination within the institution of information which might be defamatory of that official.

36 In this case, the communication to the press of the decisions to bring disciplinary proceedings against Mr Connolly and to suspend him from his duties does not cause him any damage, since his conduct which led to those proceedings being commenced consisted in the publication of the book *The Rotten Heart of Europe. The Dirty War for Europe's Money* without first obtaining prior authorization from the administration under the second paragraph of Article 17 of the Staff Regulations. There can be no doubt that such conduct is a matter of public knowledge and that its communication to the press is therefore not capable of producing damaging effects for the applicant. The statements of the President, of the Commissioner responsible for personnel matters and of the Commission's spokesman are reactions of the institution when confronted with conduct by an official which is also public. The information and comments which appear between inverted commas in press releases and newspaper articles and are attributed to the President, the Commissioner responsible for personnel matters and the Commission's spokesman cannot therefore be regarded as defamatory, since they concern an obvious and known difference of view between the applicant and the Commission, notably concerning the Union's monetary policy. Therefore, in so far as those statements do not refer to the personality of Mr Connolly, his morality and his professional abilities, they cannot affect his reputation outside the Commission.

37 The fact that it was a foreseeable possibility that the most serious disciplinary sanction might be applied in this case, namely the termination of the service relationship, does not seem capable of compromising the honour and professional dignity of the official, since this would be an event which is merely a possible consequence of the alleged breach of duty and which is provided for in the relevant provisions.

38 Nor can those statements affect the regularity of the disciplinary proceedings, in which, in any event, the administration is the party which takes the initiative. In the first place, the Disciplinary Board knows the position of the administration through documents far more exhaustive than the statements reported in the press and, secondly, finding whether Mr Connolly is in breach of his duties and taking the consequential disciplinary action are matters for the administration itself, after proceedings in which the official concerned may in any event put his point of view.

39 As regards the other statements to which the applicant refers, the documents produced in these proceedings show that many comments concerning Mr Connolly's personality, professional qualifications and health were reported in the press and attributed in particular to unnamed officials. Whilst the judge hearing the application for interim measures cannot, on the strength of this brief investigation, impute responsibility for such an attitude to the Commission, the point must still be made that for the Commission to take no measures to prevent such statements, or to adopt measures to that end which lack the necessary efficacy, constitutes a breach of the duty to have due regard to the interests of officials and of the principle of sound administration, whereby the institution is required to prevent an official from becoming the subject of statements capable of tarnishing his honour and professional reputation.

40 A prima facie case having been partially made out by the application for interim measures, it is necessary to examine whether the other condition for granting an interim measure, namely the existence of a risk of serious and irreparable damage, is satisfied.

41 In that respect, it is settled case-law that the urgency of an application for interim measures must be assessed in relation to the necessity for an interim order to prevent serious and irreparable damage to the party applying for the measure. It is for the party seeking the measure to prove that he cannot wait for the outcome of the main proceedings without suffering damage that would entail serious and

irreparable consequences (see, most recently, the order in *Eridania and Others* v *Council*, cited above, paragraph 33).

42 In this case, the applicant argues in particular that his honour and professional reputation have been affected following numerous statements reported in the press. If the damage alleged were found to exist, it would, as the applicant maintains, be not only serious but also irreversible. By its very nature, such damage cannot truly be repaired since it would be difficult to restore the person concerned to a position similar to the one he was in before the allegedly defamatory information concerning him was divulged. The only way of compensating for such alleged damage would therefore be an award of damages.

43 The documents produced by the applicant and the statements of the parties at the hearing show that much information and comment emanating from officials, whose identity is in principle unknown, has been published in the press, and that such information and comment concerns the personality, health and professional qualifications of Mr Connolly. The documents before the Court also show that the Commission has not yet adopted any measure capable of preventing such leakage of information likely to cause serious and irreparable damage to the applicant.

44 Since, in these circumstances, there is an undeniable risk that further statements might irreparably affect Mr Connolly's honour and reputation, the Commission must be reminded to take all necessary measures to ensure that no information concerning Mr Connolly's career, personality, opinions or health, likely to harm, directly or indirectly, his honour and professional reputation, is disclosed.

45 As regards the applicant's claim that the Court should order the Commission to pay a periodic penalty of BFR 100 000 for each disclosure of information concerning him, in breach, in particular, of its duty to have due regard to the interests of its officials, that claim cannot be upheld. Without there being any need to examine whether a Community court, when hearing an application for interim measures, has jurisdiction to impose a periodic penalty on an institution, it suffices to note that there is no evidence to suggest that the Commission will not discharge its obligations towards the applicant in accordance with the terms of this order. The claim for the adoption of a measure such as the imposition of a periodic penalty, designed to pressurize the institution concerned to fulfil those obligations, is therefore unfounded and must be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders as follows:

1. **The Commission is reminded to take all necessary measures to ensure that no information concerning Mr Connolly's career, personality, opinions or health, likely to harm, directly or indirectly, his personal and professional reputation, is disclosed by its staff in contacts with the press or in any other manner.**

2. **The remainder of the application for interim measures is dismissed.**

3. **Costs are reserved.**

Luxembourg, 12 December 1995.

H. Jung

Registrar

A. Saggio

President