

ORDER OF THE PRESIDENT OF THE COURT
OF 3 MAY 1979¹

Robert Buttner and Others
v Commission of the European Communities

Case 51/79 R

In Case 51/79 R,

ROBERT BUTTNER, MICHEL COLIN and GIANMARIO FASSONE, officials of the Commission of the European Communities, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18A Rue des Glacis,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Principal Legal Adviser, Raymond Baeyens, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser Mario Cervino, Jean Monnet Building,

defendant,

APPLICATION for the adoption of interim measures to prevent the dissemination and use by the Commission of the report of a study carried out at its request by P. A. International Consultants Ltd. (Pactel) and to prohibit any restructuring of the Computer Operation Division in Luxembourg in so far as it is based on that report,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT, acting as President of the Court,

hereby makes the present

¹ — Language of the Case: French.

ORDER

Facts and Issues

With a view to a reorganization of its informatics operations, carried out principally by Directorates General IX (Personnel and Administration) and XIII (Scientific and Technical Information and Information Management), the Commission engaged a private company, P. A. International Consultants Ltd., (hereinafter referred to as "Pactel"), to carry out a study in particular of the optimum use of a Siemens computer in connexion with the creation of a network for the transmission of data, referred to as "Euronet".

A preliminary version of a study report, entitled "Audit of the Siemens computer" was distributed on 18 January 1979 and on 22 February 1979 a discussion on the report took place between the officials responsible for the operations to be carried out by that computer.

The applicants took the view that certain passages in the report, in particular the recommendation (point 4.6.2.) that "suitable staff should be sought... especially for the three key posts", were defamatory of them and calculated to cause damage to their careers; accordingly by a note dated 28 February 1979 they asked the Director General of Directorate General XIII and the Director of Personnel and Administration to confirm that that report would "not be otherwise disseminated or used in any manner whatsoever". Further, on 30 March 1979 they lodged complaints in pursuance of Article 90 of the Staff Regulations of Officials with the appointing authority.

Availing themselves of the provisions of Article 91 (4) of the Staff Regulations, the applicants, without waiting for the expiration of the period allowed the appointing authority for a reply, referred the matter to the Court by an application lodged at the Registry on 2 April 1979 with a view to obtaining on the one hand a declaration that the disputed report was "contrary to the provisions of the Staff Regulations and to the accepted principles regarding... legitimate confidence" and on the other hand an order to the Commission to pay each of them the sum of one unit of account by way of damages.

By a separate document attached to the application the applicants applied for the adoption of interim measures: (a) ordering that "any circulation of the said Pactel report and any dissemination of it shall be suspended" and (b) further for a declaration that "until a decision has been made on the substance of the matter the said report shall be of no effect, and that in no event may it be used as the basis for a restructuring of the Computer Operations Division" and that costs should be reserved.

In a statement dated 18 April 1979 the defendant, the Commission, contended that the President of the Court, as an interlocutory decision, should dismiss the application for the adoption of an interim measure as inadmissible and in any case as unfounded and reserve the costs.

Decision

- 1 Under Article 83 (2) of the Rules of Procedure of the Court, the adoption of interim measures by means of an interlocutory order is subject to the existence of circumstances giving rise to urgency and to factual and legal grounds establishing a *prima facie* case for the interim measures applied for.

- 2 In support of their application the applicants point out solely, in general terms, that the dissemination of the disputed report and its possible implementation are calculated to prejudice them as regards the future progress of their careers.

- 3 The report, whose conformity with the Staff Regulations and other legal principles is called in question in the main proceedings, is an internal document drawn up by a private company for the information of the Commission; its contents and conclusions are still under consideration and it cannot in any respect bind the future behaviour of the Commission either as regards the situation of the applicants under the Staff Regulations or as regards the organization or reorganization of the departments to which they belong.

- 4 In these circumstances the consideration and dissemination by the Commission, in advance of a decision in the main proceedings is in no respect calculated to cause the applicants serious or, *a fortiori*, irreparable damage, so that the measure applied for appears to be neither urgent nor justified.

- 5 The application must therefore be dismissed.

Costs

- 6 In the circumstances costs should be reserved.

On those grounds,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT, acting as President of the Court,

as an interlocutory decision,

hereby orders as follows:

1. The application for the adoption of interim measures is dismissed.
2. Costs are reserved.

Luxembourg, 3 May 1979.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President of the First Chamber
acting as President of the Court