

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
16 February 1995 *

In Case T-5/95 R,

Amicale des Résidents du Square d'Auvergne, an association governed by French law, established in Massy, France, represented by Jean-Marc Florand, of the Paris Bar,

applicant,

v

Commission of the European Communities, represented by Giuliano Marengo, Legal Adviser, and Wouter Wils, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for (1) suspension of operation of the decisions said to be contained in the Commission's letters of 20 September 1994, 5 October 1994 and 26 October 1994 in which it rejected the applicant's complaint concerning alleged anti-

* Language of the case: French.

-competitive practices by various undertakings said to have caused an increase in the tenancy costs borne by the residents of Square d'Auvergne and (2) an order requiring the Community to pay the applicant an advance of ECU 150 000, in respect of irrecoverable costs vexatiously caused, on account of the costs to be awarded in the main proceedings,

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 16 January 1995, the applicant brought an action under Article 173 of the EC Treaty seeking the annulment of the 'declaratory decisions' of the Commission said to be contained in its letters of 20 September 1994, 5 October 1994 and 26 October 1994 rejecting the applicant's complaint against the French State and against various undertakings concerning anti-competitive practices allegedly operated by those undertakings, which were said to have caused an increase in the tenancy costs borne by the residents of Square d'Auvergne.

2 By a separate document, lodged at the Registry on the same date, the applicant also submitted an application under Articles 185 and 186 of the EC Treaty for

suspension of the operation of the contested acts, and an application for an order requiring the Community to pay the applicant an advance of ECU 150 000, in respect of irrecoverable costs vexatiously caused, on account of the costs to be awarded in the main proceedings.

3 In its written observations submitted on 1 February 1995, the Commission objected that the present application for the adoption of interim measures was manifestly inadmissible.

4 Before the application for interim measures is examined, it is appropriate to give a brief summary of the background to the case, as it appears from the pleadings and documents submitted by the parties.

5 By letter of 25 July 1994, received by the Commission on 5 September 1994, the applicant lodged a complaint against the practices of various undertakings, which were said to have caused substantial increases in the tenancy costs borne by the residents of Square d'Auvergne, and were therefore contrary *inter alia* to Articles 85 and 86 of the EC Treaty.

6 By letter of 20 September 1994 the director of Directorate C, 'Restrictive practices, abuse of dominant positions and other distortions of competition II', of the Commission's Directorate-General for Competition (DG IV) informed the applicant's representative that continuing the procedure could only lead, as matters stood, to the complaint being rejected. He added, 'Consequently, on the basis of that provisional analysis, I intend to take the necessary steps to close the file on this matter, unless you provide me, within four weeks, with new factors justifying its continuation.'

7 By letter of 5 October 1994 one of the heads of unit of Directorate B, 'Restrictive practices, abuse of dominant positions and other distortions of competition I', in

DG IV informed the applicant's representative that consideration of the case-file '[did] not make it possible to identify any elements of law or fact such as to justify an examination from the point of view of the Community competition rules' and that the file had consequently been forwarded to the Consumer Policy Service.

By letter of 26 October 1994 one of the heads of unit of the Consumer Policy Service informed the applicant's representative that the Commission was unable to intervene in the matter in question, which was within the exclusive purview of the French authorities.

Law

Pursuant to Articles 185 and 186 of the Treaty in conjunction with 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), the Court of First Instance may, if it considers that circumstances so require, order the operation of the contested act to be suspended or prescribe any necessary interim measures.

Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications for the adoption of the interim measures 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 do not pre-judge the decision on the substance of the case (see, as the most recent authority, the order of the President of the Court of First Instance in Case T-353/94 R *Post-bank v Commission* [1994] ECR 1141, paragraph 17).

Arguments of the parties

- 11 In support of its application for interim measures, the applicant argues, firstly, that the contested decisions infringe Articles 85(1), 86, 89, 155 and 190 of the EC Treaty and Articles 3(2)(b), 10(1) to (3), and 12 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87), Article 3 of Commission Regulation No 27 of 3 May 1962, First Regulation implementing Council Regulation No 17 of 6 February 1962 (OJ, English Special Edition 1959-1962, p. 132), and Articles 6, 10 and 11 of Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47).
- 12 The applicant argues, secondly, that ‘the serious and substantial nature of the matters complained of, which are liable to have a considerable impact on French territory and possibly on other Member States via subsidiaries, justifies the grant of an order suspending the operation of the said decisions, in order for the necessary investigation to be carried out by the Commission without any detrimental interruption during the main proceedings’.
- 13 The Commission considers that the application for interim measures manifestly fails to fulfil the conditions laid down in Article 104(2) of the Rules of Procedure. In its view, since the essential points of fact and law on which the application is based have not been specified, even in summary form, it is impossible for it to put forward a defence.

Assessment by the President of the Court

- 14 It must be stated at the outset that the application for interim measures does not appear at first sight to fulfil the conditions laid down by Article 104(2) of the Rules of Procedure. No circumstance establishing the urgency of the measures sought is

stated in the application. Moreover, it does not contain any precise account of the facts giving rise to the proceedings. Finally, the pleas in law put forward are not supported by any specific arguments.

15 In any event, the Court considers it appropriate to note that, according to settled case-law, the urgency of the interim measures sought must be appraised in relation to the necessity for an interim order to prevent the occurrence before a decision in the main proceedings of serious and irreparable damage to the party applying for the interim measures. It is for the applicant to prove that it cannot wait for the outcome of the main proceedings without suffering damage that would entail serious and irreparable consequences (see the order in *Postbank v Commission*, cited above, paragraph 30).

16 On this point it must be stated that in the application for interim measures the applicant merely refers to 'the serious and substantial nature of the matters complained of, which are liable to have a considerable impact on French territory and possibly on other Member States via subsidiaries'.

17 That assertion by the applicant is manifestly vague and hypothetical and is not accompanied by any evidence of the serious and irreparable nature of the alleged damage.

18 Furthermore, the circumstance alleged by the applicant cannot in any event be regarded as a necessary or even probable consequence of the operation of the contested decisions, which are after all decisions rejecting a complaint and cannot in this case properly be the subject of an interim measure suspending them.

- 19 It follows that the applicant has not shown that in the particular circumstances of the case, if the suspension sought were not granted, the contested decisions could cause it damage which could no longer be remedied by compliance with a judgment of the Court, if that judgment were to annul those decisions in the main proceedings.
- 20 As to the application for an order requiring the Community to pay the applicant an advance of ECU 150 000 on account of costs to be awarded in the main proceedings, it suffices to note that under Article 87(1) of the Rules of Procedure the decision as to costs is to be given in the final judgment or in the order which closes the proceedings. Since the present order has only interim effect, in accordance with Article 107(4) of the Rules of Procedure, it is not appropriate to give a decision on costs at this stage of the proceedings.
- 21 Consequently, without its being necessary to examine whether the arguments relied upon in the main proceedings by the applicant amount to a *prima facie* case, it must be held that the conditions in law for the grant of the interim measures sought are not fulfilled and the application must therefore be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1) The application for the adoption of interim measures is dismissed;

2) The costs are reserved.

Luxembourg, 16 February 1995.

H. Jung
Registrar

J. L. Cruz Vilaça
President