

ORDER OF THE PRESIDENT OF THE THIRD CHAMBER
OF THE COURT
3 JULY 1984 ¹

**Henri de Compte
v European Parliament**

Case 141/84 R

*Application for the adoption of interim measures — Suspension of operation —
Conditions governing the grant of such a measure
(EEC Treaty, Art. 185; Rules of Procedure, Art. 83 (2))*

The measures available under Article 83 (2) of the Rules of Procedure may be granted by the judge responsible for granting interim relief, provided there are factual and legal grounds establishing a *prima facie* case for the adoption of such measures; provided there is an urgent need for the measures, that is to say it is necessary, in order to avoid serious and irreparable damage, that they

should be adopted and come into effect before judgment is delivered on the substance of the case; and, finally, provided they are provisional, that is to say, they do not prejudice the substantive decision and do not decide contested points of law or of fact at that early stage or neutralize in advance the effects of the decision to be given subsequently on the substance of the case.

In Case 141/84 R

HENRI DE COMPTE, an official of the European Parliament, residing at 10 Avenue Guillaume, Luxembourg, represented by Gaston Vogel of the Luxembourg Bar,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary-General, H. J. Opitz, acting as Agent, assisted by M. Peter, Head of the Division for Legal and Administrative Affairs, and by R. Andersen of the Brussels Bar, 214 Avenue

¹ — Language of the Case: French.

Montjoie, 1180 Brussels, with an address for service in Luxembourg at the Secretariat General of the European Parliament, Kirchberg,

defendant,

APPLICATION to suspend the operation of the decision dated 24 May 1984 by which the President of the European Parliament downgraded Mr de Compte from Grade A 3, step 8 to Grade A 7, step 6, as a disciplinary measure.

Since the President of the Court of Justice was indisposed he assigned this application for the adoption of an interim measure to the President of the Third Chamber.

ORDER

I — Facts

On 14 January 1983 the President of the European Parliament informed Mr de Compte of certain facts which might lead to the institution of disciplinary proceedings against him.

On 28 January 1983, pursuant to Article 87 of the Staff Regulations of Officials, the Director-General for Administration, Personnel and Finance of the European Parliament invited Mr de Compte to submit his views on the matters in question.

On 13 April 1983, pursuant to the second paragraph of Article 87 of the Staff Regulations, the President of the Parliament submitted to the Disciplinary Board a report concerning the allegations made against Mr de Compte, a Head of Division employed as an accountant by the Parliament.

The Disciplinary Board met on several occasions between 2 June 1983 and 10 February 1984.

On the latter date the Disciplinary Board proposed by three votes to two that Mr de Compte should be reprimanded. The two members who did not support such a measure were in favour of simply dismissing the charges against the official in question.

Pursuant to the final paragraph of Article 7 of Annex IX to the Staff Regulations Mr de Compte was given a hearing on 8 March 1984 by the President of the European Parliament in his capacity as the appointing authority.

On 16 March 1984 the President of the European Parliament decided to remove Mr de Compte from his post without a reduction or withdrawal of his pension rights.

On 21 March 1984 Mr de Compte submitted to the President of the Parliament, under Article 90 (2) of the Staff Regulations, a complaint against the decision of 16 March 1984 removing him from his post; a supplementary complaint was submitted on 11 April 1984.

On 10 April 1984 the European Parliament by a substantial majority granted a final discharge to Mr de Compte in respect of the 1981 financial year (the financial year in question).

On 24 May 1984 the President of the European Parliament, in response to the initial complaint and to the supplementary complaint, decided that instead of being removed from his post Mr de Compte should be demoted to Grade A7, step 6. As grounds for that decision he referred to the reasons upon which the initial decision to remove Mr de Compte from his post had been based.

On 4 June 1984 Mr de Compte took the following steps:

He submitted a complaint to the President of the European Parliament in which he argued that it was no longer appropriate simply to refer to the reasons given for the initial decision to remove him from his post since, in the meantime, the European Parliament had granted him a final discharge in respect of the financial year in question, thereby recognizing that his activities as accountant were correct and above criticism.

He brought an action before the Court for annulment of the aforementioned decision of 24 May 1984, by which he had been downgraded.

He applied for an interim order suspending the operation of that decision until the Court delivered judgment in the main action.

Article 91 (4) of the Staff Regulations provides that:

"By way of derogation from paragraph 2, the person concerned may, after submitting a complaint to the appointing authority pursuant to Article 90 (2), immediately file an appeal with the Court of Justice, provided that such appeal is accompanied by an application either for a stay of execution of the contested act or for the adoption of interim measures. The proceedings in the principal action before the Court of Justice shall then be suspended until such time as an express or implied decision rejecting the complaint is taken."

By a decision dated 6 June 1984 the principal action before the Court of Justice was suspended until such time as an express or implied decision rejecting the complaint should be taken.

II — Submissions and arguments of the parties

(1) *With regard to the requirement of urgency and the danger of serious and irreparable damage in the event of the contested decision's being put into effect immediately*

(a) The applicant submits the following arguments:

Urgency is established since the downgrading is to take effect on 15 June 1984.

The putting into effect of the disciplinary measure adopted in respect of the applicant would involve a monthly loss of BFR 120 000 and would cause him extreme financial difficulties.

In that respect the applicant annexed to his application a statement of what his monthly finances would be from June 1984, should the operation of the contested decision not be suspended; that financial statement shows that, without taking into account ordinary living expenses, fixed outgoings would amount to BFR ... from an income reduced to BFR ..., that is to say a deficit of approximately BFR ... It also follows from the statement that Mr de Compte uses a substantial part of his salary to repay loans contracted for the purchase or repair of various apartments and houses owned by him. The applicant contends that a major reduction of his salary would prevent him from honouring his commitments and he produced a certificate from the Caisse Hypothécaire de Luxembourg dated 30 May 1984 informing him that if the instalments due were not paid his properties would immediately be the subject of a forced sale.

The applicant also maintained that the damage would be irreparable in so far as if the disciplinary measure was put into effect the Grade A 3 post which he had held would become vacant and there was the possibility that it would be filled by another official before the Court's judgment was delivered.

(b) The European Parliament submits the following arguments:

The European Parliament takes the view that it would not cause irreparable damage to the official to put the contested disciplinary measure into effect. He would in fact remain in employment and he would receive the remuneration attaching to a Grade A 7/6 post, which is a reasonable salary.

According to the Parliament, if the applicant's arguments were accepted, every official in respect of whom a disciplinary measure having financial effects is adopted would be able to obtain from the Court of Justice a suspension of the operation of that measure because the putting into effect thereof would involve a reduction of his standard of living.

The European Parliament also contends that the statement of monthly finances produced in support of the application for the adoption of interim measures is not conclusive for two reasons:

First, the properties belonging to the applicant may well themselves produce sufficient income to cover the interest on the relevant loans and the repayment of the capital.

Secondly, part of the expenses referred to by the applicant in his financial statement relates to assistance given by him voluntarily to his daughter and son-in-law, that is to say to members of his family who are no longer part of his household.

Finally, the Parliament maintains that if the Court gives judgment in favour of the applicant in the main action the effect of that judgment would be to reinstate Mr de Compte in his previous grade with payment of the arrears of salary for the whole of the period in question.

With regard to the second argument submitted by the applicant in support of his contention that the damage would be difficult to repair, the Parliament replies that since the appointing authority is

responsible for the proper organization of its departments it is always entitled to assign each member of its staff to any post corresponding to his grade and that no member of the staff has a right to retain his original post indefinitely.

(2) *With regard to the existence of one or more grounds establishing a prima facie case for the measure applied for*

(a) The applicant's submissions

(i) *Alleged procedural irregularities*

Mr de Compte maintains first that at the preliminary hearing which constitutes the first stage of disciplinary proceedings and which is provided for by Article 87 of the Staff Regulations the appointing authority cannot replace itself with an official even if he is assigned the necessary powers.

Secondly, Mr de Compte contends that the principle of *audi alteram partem*, which constitutes a general principle of the law relating to disciplinary proceedings and which is confirmed by Article 6 of Annex IX to the Staff Regulations, was infringed since the documents which he presented to the official in question on the occasion of the preliminary hearing were never passed on to the Disciplinary Board.

He maintains, thirdly, that the same principle was also infringed by virtue of the fact that the Disciplinary Board heard the evidence of three witnesses in his absence.

Fourthly, he contends that the same principle was infringed by virtue of the fact that the Disciplinary Board refused to hear the evidence of witnesses called by the defence.

Fifthly, he contends that the same principle was infringed once again by virtue of the fact that the Disciplinary Board wrongly refused to suspend its investigations pending the result of an administrative inquiry conducted by the Committee on Budgetary Control.

Finally, the applicant submits that the decision of 24 May 1984 downgrading him to Grade A 7 is based on insufficient reasons since that decision refers to no reasons other than those on which the preceding decision of 16 March 1984 was based, which was adopted before the European Parliament granted him a final discharge and before the publication of the report drawn up by the Committee on Budgetary Control. That shows that the appointing authority completely ignored that important new factor and did not give a reasoned reply to Mr de Compte, whose submissions were based largely on that factor.

(ii) *The substantive legality of the disciplinary measures*

The applicant alleges breach of the principle of *non bis in idem*, which forbids not only the imposition of two disciplinary measures in respect of the same offence but also the institution of two disciplinary proceedings in respect of the same factual situation. Mr De Compte considers that he had already been the subject of a transfer by way of disciplinary measure in May 1982.

The final discharge granted by the European Parliament on 10 April 1984 deprives the disciplinary measure of its legal basis.

The six complaints made against Mr de Compte are based on a mistaken interpretation of the facts.

The disciplinary measure is manifestly disproportionate to the gravity of the offences with which Mr de Compte is charged, even if they can be proved, having regard to the numerous extenuating circumstances in his favour, in particular the administrative, physical and human environment in which he worked, as a result of which he was unable to discharge fully the responsibilities placed upon him.

(b) The defendant's submissions

The European Parliament limits itself in its observations with regard to the application for the adoption of interim

measures to stating that it will respond to the various submissions in the course of the substantive action and that for the moment it merely indicates as follows:

That it disputes the alleged procedural irregularities raised by the applicant;

That the final discharge given to the applicant does not have the scope alleged by him.

III — Oral procedure

The parties presented oral argument at a hearing on 2 July 1984.

Decision

- 1 According to Article 185 of the EEC Treaty, 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 measure be suspended. It may also prescribe any other necessary interim measure.
- 2 According to Article 83 (2) of the Rules of Procedure of the Court, the suspension of operation of a measure or the adoption of any other interim measure is subject to the existence of circumstances giving rise to urgency and of grounds establishing a *prima facie* case for the adoption of such a measure.
- 3 In numerous previous cases the Court has held that such a measure may be adopted by the judge responsible for granting interim relief provided there are factual and legal grounds establishing a *prima facie* case for its adoption; provided there is an urgent need for the measure, that is to say it is necessary, in order to avoid serious and irreparable damage, that it should be

adopted and come into effect before judgment is delivered on the substance of the case; and, finally, provided the measure is provisional, that is to say, it does not prejudice the substantive decision and it does not decide contested points of law or of fact at that early stage or neutralize in advance the effects of the decision to be given subsequently on the substance of the case.

The requirement of urgency and the existence of serious and irreparable damage

- 4 In principle, purely pecuniary damage cannot be regarded as irreparable or even as difficult to repair since, in theory, it may be the subject of subsequent financial compensation, as the Court has held on several occasions (Order of 17. 9. 1974 in Case 62/74 R *Velozzi v Commission* [1974] ECR 895; Order of the President of the First Chamber of 22. 5. 1980 in Case 33/80 R *Albini v Council and Commission* [1980] ECR 1671). Nevertheless, the judge hearing the application for the adoption of interim measures must examine the circumstances of each case. He must consider those matters enabling it to be established whether immediate application of the decision in question is likely to involve the applicant in irreversible damage which could not be made good even if the decision were to be annulled and which in spite of its provisional nature would be disproportionate to the interest of the institution in question, pursuant to Article 185 of the Treaty, in having its decisions applied even when they are the subject of an application to the Court (Order of 21. 8. 1980 in Case 174/80 R *Reichardt v Commission* [1980] ECR 2665).
- 5 In the particular circumstances of this case it is clear both from an examination of the parties' written submissions, in particular the annexes produced by Mr de Compte in support of his application for the adoption of interim measures, and from the hearing before the judge considering that application, that the very substantial reduction in Mr de Compte's remuneration which would result from an immediate application of the contested decision would compel him to sell his property on unfavourable terms and thus be permanently deprived of a part of his assets. Even if the Court subsequently gave judgment in his favour with regard to the substance of the case, he would not be able to recover the property he had lost on the same terms.

- 6 Furthermore, the measure sought in this case is clearly urgent. In the first place, the downgrading was to take effect from 15 June 1984; secondly, the immediate substantial reduction in the applicant's salary would force him, as he stated at the hearing without being contradicted, to sell an apartment with as little delay as possible in order to be able to meet his various obligations.
- 7 Moreover, as the European Parliament accepted at the hearing, the fact that Mr de Compte continues to receive the salary attaching to Grade A 3 for several more months until the Court gives judgment does not detract from the organization of the public service or involve any risk of permanent loss since the Parliament is certain to be able to recover any sums overpaid if the Court dismisses the application for annulment.
- 8 In those circumstances the requirement of urgency and the existence of serious damage which would be difficult to repair, in the event of the contested decision's being applied immediately, must be regarded as satisfied.

The existence of grounds establishing a *prima facie* case for suspending the operation of the contested decision

- 9 It must be noted first that the Parliament refrained from replying, in the proceedings on the application for interim relief, to the applicant's submissions in support of his application for annulment. It is therefore impossible for the judge hearing the application for interim relief to come to a clear conclusion, on the basis of the evidence available at this stage, with regard to the relevance, accuracy and nature of the contested facts.
- 10 Such silence on the part of the European Parliament does not mean that it may be regarded as acquiescing in the submissions made by the applicant, nor, conversely, may it deprive the applicant of the right to have his application to suspend the operation of the decision in question examined with all the necessary care and diligence.

11 In those circumstances the judge responsible for granting interim relief must limit himself to taking note of those factors which show that there is a real dispute before him and that the applicant's claim is supported by sound arguments. In this case those factors are as follows:

(1) The Disciplinary Board, on completion of a searching inquiry, was in favour of imposing a very mild sanction, whereas the sanction ultimately imposed was somewhat severe.

(2) On 10 April 1984 the European Parliament granted to Mr de Compte, by a substantial majority, on the basis of a report drawn up by its Committee on Budgetary Control, a final discharge in respect of the accounting year in question. It is true that the final discharge procedure, which is intended to determine whether the accounts are accurate and in the proper form, is different from disciplinary proceedings, which are intended to determine the accountant's responsibility. Nevertheless, following the meticulous examination of Mr de Compte's activities undertaken by the Parliament's Committee on Budgetary Control its appraisal of the applicant's responsibility in relation to the principal complaints made against him is far removed from that of the appointing authority.

(3) Finally, the appointing authority exhibited great uncertainty in relation to the severity of the disciplinary measure to be imposed on the applicant. Having decided on 16 March 1984 that the applicant should be removed from his post, it changed that measure on 24 May 1984 to downgrading to Grade A7. That uncertainty is disquieting in so far as the appointing authority has not explained the reasons for its change of view. In fact the disciplinary measure imposed on 24 May, which is the subject of this application for interim relief, simply refers to the reasons given in support of the initial decision to remove the applicant from his post, reasons which were formulated before the European Parliament granted him a final discharge and before the publication of the report drawn up by the Committee on Budgetary Control.

12 The aforementioned facts clearly cannot in any way prejudge the issue of the legality or otherwise of the contested disciplinary measure. Nevertheless, in the absence of any response on the part of the Parliament, in the course of

the proceedings on the application for interim relief, to the submissions made by the applicant in support of the claim for annulment of the decision, the factors mentioned above lead to the conclusion that the applicant has established at least a *prima facie* case for the interim measure applied for, within the meaning of Article 83 (2) of the Rules of Procedure.

- 13 In those circumstances the application to suspend the operation of the measure in question must be granted.

Costs

- 14 It is appropriate, at this stage, to reserve costs.

On those grounds,

THE PRESIDENT OF THE THIRD CHAMBER, acting on behalf of the President of the Court,

by way of interim decision,

hereby orders as follows:

1. The operation of the decision of 24 May 1984 imposing on Mr de Compte the disciplinary measure of downgrading to Grade A 7, step 6, shall be suspended until the Court gives judgment in the main action.
2. The costs are reserved.

Luxembourg, 3 July 1984

J. A. Pompe
Deputy Registrar

Y. Galmot
President of the Third Chamber