

ORDER OF THE PRESIDENT  
OF THE FIRST CHAMBER OF THE COURT  
30 NOVEMBER 1972<sup>1</sup>

**Letizia Perinciolo**  
**v Council of the European Communities**

Case 75/72 R

In Case 75/72 R

LETIZIA PERNCIOLO, an official of the Council of the European Communities, represented by Emile Drappier, Advocate of the Cour d'Appel, Brussels, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34b rue Philippe-II,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by Gonzague Lesort, Legal Adviser to the Secretariat General of the Council, with an address for service in Luxembourg at the offices of Emile Reuter, Legal Adviser to the Commission of the European Communities, 4 boulevard Royal,

defendant,

Application for the suspension of the operation of the measure suspending payment of salary under Article 60 of the Staff Regulations of Officials,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

ORDER

**Facts**

Miss Letizia Perinciolo, an official in Grade C 3 in the Secretariat-General of the Council of the European Communities since 16 January 1964, was posted with

effect from 25 May 1972 to Directorate-General A, the typing pool for the Italian section, as a shorthand-typist. She objected to this posting alleging, on the

<sup>1</sup> — Language of the Case: French.

basis of medical certificates, that she was unable to carry out the duties of a typist.

In reliance on the opinion given by its medical advisers, the Council maintained the posting.

In a letter of 20 June 1972, the Director of Administration of the Secretariat-General of the Council, having ascertained that Miss Perinciolo had not taken up duty in the post to which she had been assigned, informed her that her absence was regarded as unauthorized and that it would therefore entail, in accordance with the conditions set out in Article 60 of the Staff Regulations of Officials, the forfeiture of her remuneration as from 3 July 1972.

By a letter of 20 July 1972, the Secretary-General of the Council informed the applicant that, apart from the period of sick leave from 9 to 29 July 1972, payment of her remuneration would continue to be suspended until she took up duty in the Italian section of the typing pool.

On 9 October 1972 the applicant submitted a complaint against this measure to the

appointing authority.

By an application lodged at the Registry on 20 October 1972 and registered under No 75/72, she sought the annulment of the decisions contained in the letters of 20 June 1972, 20 July 1972 and 28 August 1972.

In a separate document annexed to the application she further submitted an application for the adoption of an interim order to the effect that the operation of the measure suspending payment of her remuneration should be suspended.

By a document lodged at the Registry on 14 November 1972 in accordance with Article 83(1) of the Rules of Procedure of the Court, the Council of the European Communities, the defendant, contended that the Court should reject the application for the adoption of an interim order.

The parties submitted oral observations at the hearing of the application for the adoption of an interim order on 28 November 1972.

## Law

- 1 By her application for the adoption of an interim order, Miss Perinciolo asks the Court to order that the operation of the measure suspending payment of her remuneration which is the subject of the main action should be suspended.
- 2 The Council of the European Communities objects that this application is inadmissible since the decision at issue was contained in a letter of 20 June 1972 from the Director of Administration of the Secretariat General of the Council and that no complaint was made between that date and 20 September 1972 as required by Article 90(2) of the Staff Regulations.
- 3 In addition it points out that the provisions of Article 60 of the Staff Regulations are mandatory and that the conditions for their application are fulfilled in this case.
- 4 Article 91 (4) of the Staff Regulations as amended by the Council on 30 June 1972 (OJ 1972, L 160) provides that an application for a stay of execution of a contested act must be made concurrently with the main action brought after submission of the complaint referred to in Article 90(2) of the Staff Regulations.
- 5 In this case the main action to which the application for a stay of execution is joined is directed not only against the decision contained in the letter of 20 June 1972 from the Director of Administration of the Secretariat General of the Council

but also against the decision contained in the letter of 20 July 1972 from the Secretary General.

- 6 In respect of this latter decision, the complaint of 9 October 1972 was made within the period set out in Article 90(2) of the Staff Regulations.
- 7 In examining the admissibility of an application for a suspension of the operation of a measure, the judge in the interim proceedings must not prejudge questions relating to the admissibility of the main action which are within the jurisdiction of the court hearing the main action.
- 8 Since the application for a stay of execution complies with the conditions set out in Article 91(4) of the Staff Regulations, it is admissible.
- 9 Article 83(2) of the Rules of Procedure of the Court provides that the suspension of operation of a measure is subject to the existence of circumstances giving rise to urgency and grounds establishing a *prima facie* case for the interim measures applied for.
- 10 The first paragraph of Article 60 of the Staff Regulations provides that the principal reason for forfeiture of remuneration is the absence of an official without authorization under the regulations or from the appointing authority.
- 11 The applicant justifies the absences in question by stating that she suffered from an invalidity which made her unfit to carry out the typist's duties involved in the post to which she had been assigned.
- 12 Whilst an official is entitled to seek recognition through administrative channels or if necessary before the Court of the invalidity from which he claims to suffer, this alleged invalidity does not constitute sufficient grounds for absence from work, except in cases where it is actually impossible to attend, without the agreement of the appointing authority.
- 13 The way in which an official fulfils the duties assigned to him may on the other hand constitute evidence useful to the appointing authority.
- 14 Therefore, since the applicant has not established the existence of grounds which *prima facie* justify her application for the adoption of an interim measure there are no grounds for ordering the suspension of operation of the measure suspending payment of her remuneration.

#### Costs

- 15 In the circumstances costs should be reserved.

On those grounds,

Upon reading the pleadings;

Upon hearing the parties;

Having regard to the Staff Regulations of Officials of the European Communities, especially Articles 60, 90 and 91;

Having regard to the Rules of Procedure of the Court of Justice, especially Articles 83 and 95,

THE PRESIDENT OF THE FIRST CHAMBER, as an interim ruling, hereby orders:

- 1. The application for the suspension of operation of the measure suspending payment of the remuneration of Miss Letizia Perinciolo under Article 60 of the Staff Regulations is dismissed;**
- 2. The costs are reserved.**

Delivered in open court in Luxembourg on 30 November 1972.

A. Van Houtte  
Registrar

R. Monaco  
President of the First Chamber