

ORDER OF THE PRESIDENT OF THE THIRD CHAMBER
OF THE COURT
5 FEBRUARY 1982 ¹

**Sven-Ole Mogensen and Others
v Commission of the European Communities**

Case 10/82 R

In Case 10/82 R

SVEN-OLE MOGENSEN, CARL WALTEBURG, LENE ØHRGAARD and JEAN-LOUIS DELVAUX, officials of the Commission of the European Communities, represented by Jytte Thorbek, of the Copenhagen Bar, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 2 Rue Goethe,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Johannes F. Buhl, its Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the adoption of interim measures, namely an injunction prohibiting the making of any appointment to the post of reviser declared

¹ — Language of the Case: Danish.

vacant by Notice No COM/1144/80 until judgment is given in the main action in which the applicants have challenged the lawfulness of the decision of the Commission rejecting their applications for the said post,

ORDER

Facts and Issues

On 19 December 1980 the defendant institution published Vacancy Notice No COM/1144/80 indicating that a post of reviser was vacant in the Danish Translation Section. The four applicants applied for that post. On 15 May 1981 they were notified of a decision adopted by the appointing authority rejecting their applications. They each lodged a complaint dated 18 March 1981 against that decision. That complaint was rejected by a letter of 1 December 1981. The applicants then submitted a joint application which was recorded at the Court Registry on 8 January 1982. In the meantime the Commission, by a decision adopted at a date which does not appear from the file, decided to appoint to the vacant post, by way of transfer, Mr E. H., a reviser with the Council, with effect from 1 January 1982. The applicants submitted, by a separate document, an application for the adoption of interim measures dated 22 December 1981 and recorded at the Court Registry on 8 January 1982 claiming that the Court should prohibit the defendant from filling the post of reviser (COM/1144/80) until judgment has been given in the main action.

The defendant replied by a statement recorded at the Registry on 25 January 1982; it contended that the application for the adoption of interim measures

should be rejected. The parties were summoned to a hearing on 1 February 1982 by the President of the Third Chamber to whom the matter was assigned by a decision of the President of the Court dated 12 January 1982.

The applicants put forward the following arguments:

There is urgency because the allocation of the post in dispute to Mr E. H. would compromise the appointment of one of the applicants after judgment is given on the substance of the case.

For the same reason the applicants are liable to suffer irreparable damage, which cannot be made good.

It would be contrary to the principle of legal certainty to fill the post in dispute.

According to the defendant:

There is no urgency in this matter as the post has been filled since 1 January in accordance with the provisions of the Staff Regulations.

Any damage suffered by the applicants may be compensated, for example by an award of damages.

The suspension is not *prima facie* justified, as is required by the case-law of the Court.

Decision

- 1 A judge before whom a request for the adoption of interim measures is brought, having heard the arguments set out by the parties, must restrict the scope of his consideration exclusively to the grounds capable of establishing the existence of urgency.
- 2 From that point of view it must be noted first of all that the post in dispute has already been filled and that, having regard to the facts at the present time, there is no longer any reason to grant the measure requested.
- 3 Although that finding has no effect whatever on the judgment to be given in the main action and on any consequences which it may have, it is appropriate to take note of the factual situation and to dismiss this application since it is now devoid of purpose.

Costs

- 4 In these circumstances the costs must be reserved.

On those grounds,

THE PRESIDENT OF THE THIRD CHAMBER OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES,

by way of interlocutory decision,

hereby orders as follows:

1. The application for the adoption of interim measures is dismissed.

2. The costs are reserved.

Luxembourg, 5 February 1982.

A. Van Houtte
Registrar

A. Touffait
President of the Third Chamber