

JUDGMENT OF THE COURT (First Chamber)
10 July 1986 *

In Case 270/84

Assunta Licata, an official of the Economic and Social Committee, represented by J.-N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of N. Decker, of the Luxembourg Bar, 16 avenue Marie-Thérèse,

applicant,

v

Economic and Social Committee, represented by D. Brüggermann, a member of the Directorate of Personnel, acting as agent, assisted by A. Bonn, of the Luxembourg Bar, with an address for service at the latter's Chambers at 22, Côte d'Eich,

defendant,

APPLICATION for the annulment of the decision whereby the Economic and Social Committee excluded Mrs Licata from the Staff Committee by applying General Decision No 173/84 A of 7 May 1984 of the Chairman of the Economic and Social Committee, and of the Decision of 31 October 1984 to organize *ad hoc* elections with a view to her replacement,

THE COURT (First Chamber)

composed of: R. Joliet, President of the Chamber, G. Bosco and F. Schockweiler, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 23 April 1986,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

- 1 By an application lodged at the Court Registry on 24 November 1984, Assunta Licata, an official of the Economic and Social Committee, brought an action for the annulment of the decision whereby the Economic and Social Committee excluded her from the Staff Committee by applying General Decision No 173/84 A of 7 May 1984 of the Chairman of the Economic and Social Committee (hereinafter referred to as 'the amending decision') and of the decision of 31 October 1984 to hold *ad hoc* elections with a view to her replacement.
- 2 On 21 April 1983, Mrs Licata, then a member of the local staff of the Economic and Social Committee, was elected a member of the Staff Committee as sole representative of the employees referred to in the first paragraph of Article 7 of the Conditions of Employment of Other Servants of the European Communities. In the normal course of events her term of office would have expired on 31 March 1985.
- 3 On 22 December 1983, Mrs Licata was appointed an official in Grade D 3, step 3, with effect from 1 January 1984.
- 4 Since not all the groups of employees were represented following that change of classification, the Staff Committee considered that its composition was no longer in conformity with the requirements of the fourth paragraph of Article 1 of Annex II to the Staff Regulations, which requires the membership of the Staff Committee to ensure the representation of all categories of officials, of all services and of other servants.
- 5 In those circumstances, the Staff Committee considered that *ad hoc* elections should be organized for the purpose of replacing Mrs Licata. Wishing to hold those elections on the basis of a more precise provision, on 2 May 1984 it

requested the Secretary General of the Economic and Social Committee to make an appropriate amendment to Decision No 1896/75 A of the Economic and Social Committee of 28 July 1975, Article 5 of which provided *inter alia* that 'The term of office of a member of the Committee shall also end on resignation or on termination of service'.

- 6 On 7 May 1984, the Chairman of the Economic and Social Committee adopted the amending decision which, 'in the interests of clarity and legal certainty' amended Article 5 of the abovementioned decision. As a result, the term of office of a member of the Staff Committee also ends on 'transfer to another category, service or conditions of employment where conditions of representativity of the Staff Committee set out in Article 3 are no longer met'.
- 7 Relying upon the amended provision, the Staff Committee refused to take account of Mrs Licata's vote at a meeting held on 25 June 1984 and on 28 June 1984 decided to regard her term of office as having ended.
- 8 Although it had adopted the amending decision for reasons of 'legal certainty', on 31 July 1984 the Economic and Social Committee, acting through its Secretary General, informed the Staff Committee that that decision was suspended.
- 9 On 9 October 1984, the Staff Committee convened a general meeting of the staff to decide on the holding of *ad hoc* elections.
- 10 On 11 October 1984, the Secretary General of the Economic and Social Committee informed the Staff Committee that the amending decision was operative once more.
- 11 On 12 October 1984, the General Meeting of Staff decided to appoint an election committee. On 31 October 1984, the latter announced that *ad hoc* elections would be held on 19 November 1984.
- 12 On 6 November 1984, Mrs Licata lodged a complaint under Article 90 (2) of the Staff Regulations against the amending decision and the decision to exclude her from the Staff Committee.

- 13 On 14 November 1984, she brought the present action.
- 14 On the same day, she applied to the Court for the adoption of interim measures. The President of the First Chamber of the Court granted her application by an order of 11 December 1984 (Case 270/84 R [1984] ECR 4119) which suspended the operation of the amending decision and the decision to hold *ad hoc* elections until judgment had been delivered on the substance of the case.
- 15 On 29 January 1985, the Secretary General of the Economic and Social Committee rejected the applicant's complaint.
- 16 Pursuant to Article 21 of the Protocol on the Statute of the Court of Justice of the European Economic Community, the Court requested the European Parliament, the Council and the Commission to indicate whether there was a rule applicable to the Staff Committees in those institutions of a kind similar to that contained in the amending decision. It is apparent from the answers given that none of those institutions has adopted any written rule curtailing the term of office of a member of the Staff Committee who is the sole representative of a group of staff and changes group during his term of office.

Admissibility

- 17 The Economic and Social Committee contests the admissibility of the application. In the first place, Mrs Licata does not in its view have any interest in pursuing her action since the abovementioned order of the President of the First Chamber of the Court enabled her to serve out her normal term of office. In addition, the conclusions in the application are not identical to those contained in the complaint, which made no mention of the decision to hold *ad hoc* elections. Finally, in so far as the complaint was directed against the decision of the Staff Committee of 28 June 1984, the only measure against which an action might be brought in the circumstances of this case, it was out of time and the application is therefore inadmissible.
- 18 Mrs Licata states in reply to the second argument that her complaint related to the decision to exclude her from the Staff Committee and that the decision to hold *ad hoc* elections was merely a consequence of the first decision. Moreover, the

complaint was not out of time since the amending decision pursuant to which the Staff Committee decided on 28 June 1984 to exclude her was suspended from 31 July to 11 October 1984.

- 19 It must be stated in the first place that as a result of the order of the President of the Third Chamber of the Court of 11 June 1985 (Case 146/85 R. *Diezler and Others v Economic and Social Committee* [1985] ECR 1805), the Staff Committee general elections which ought, in the normal course of events, to have been held on 10 June 1985 have been postponed. Consequently Mrs Licata has an interest in not being deprived of her office after the re-entry into force of the amending decision.
- 20 It appears that the subject-matter of the application differs from that of the complaint in so far as the latter did not refer to the decision of 31 October 1984 to hold *ad hoc* elections. The application must therefore be declared inadmissible in so far as it refers to that decision.
- 21 It should be noted finally that since the amending decision was suspended from 31 July to 11 October 1984, the decision which the Staff Committee adopted on 28 June 1984 on the basis of the amending decision must be regarded as having been suspended for the same period. The complaint was therefore lodged within the period prescribed in the Staff Regulations.
- 22 It is apparent from the foregoing considerations that the application is admissible only to the extent to which it is directed against the decision of the Economic and Social Committee of 28 June 1984 to exclude Mrs Licata from the Staff Committee.

The substance of the application

- 23 Mrs Licata makes three submissions in her application. She claims in the first place that the Economic and Social Committee infringed Article 6 of Decision No 1896/75 A of 28 July 1975 and Article 110 of the Staff Regulations which, respectively, required it to consult the Staff Committee and the Staff Regulations Committee before adopting the amending decision. In the second place, the amending decision infringes the fourth paragraph of Article 1 of Annex II to the Staff Regulations in so far as it imposes for the full term of office of the Staff Committee conditions as to representation which under the fourth paragraph of

Article 1 of Annex II apply only at the time of the election of the members of the Staff Committee. In the third place, she considers that in any event the application of the amending decision to her contravenes the principle that measures should not be retroactive since at the time of her election no rule existed to the effect that transfer to another category, service or conditions of employment curtailed a member's term of office.

24 The Economic and Social Committee considers that, as regards the contention that the Staff Committee was not consulted, the first submission is without foundation since the amending decision was actually adopted at the request of the Staff Committee. It is also inadmissible as far as the failure to consult the Staff Regulations Committee is concerned, since that contention does not appear in the original application. The second submission is without foundation since the conditions concerning representativity laid down in the article concerned apply throughout the committee's term of office. The third submission is also without foundation since the amending decision adopted an interpretation of Decision No 1896/75 A of 28 July 1975 which was necessary in the light of the Staff Regulations.

25 As regards the first submission, the Economic and Social Committee correctly draws attention to the fact that the amending decision was actually adopted at the request of the Staff Committee. The contention that Article 6 of Decision No 1896/75 A of 28 July 1975 was infringed is therefore unfounded. Moreover, the contention that the Staff Regulations Committee was not consulted as required by Article 110 of the Staff Regulations did not appear in the original application and is inadmissible in so far as no new information has been produced.

26 As regards the second submission, it must be noted that by virtue of Article 9 (2) of the Staff Regulations, each institution determines the composition and procedure of its Staff Committee in accordance with the provisions of Annex II to the Staff Regulations. The fourth paragraph of Article 1 of that annex provides that the membership of the Staff Committee must ensure the representation of all categories of officials, other employees and services.

27 It must be stated that Article 9 (2) of the Staff Regulations distinguishes between the composition and the procedures of the consultative bodies, whereas the fourth paragraph of Article 1 of Annex II to the Staff Regulations lays down requirements only with regard to the composition of the Staff Committee. Procedure includes the matter of the representation of all categories of officials, other employees and services throughout the terms of office of the members of the Staff Committee.

28 It follows that each institution is free to adopt its own rules in that respect.

29 In particular, the Economic and Social Committee was fully entitled to prescribe, in the amending decision, that, as well as in the cases already envisaged in Decision No 1896/75 A, the term of office of a member of the Staff Committee who is the only person elected to represent a given category, service or persons under certain conditions of employment, must be curtailed in the event of the member in question being transferred, whilst in office, 'to another category, service or conditions of employment'.

30 The second submission is therefore unfounded.

31 As regards the third submission, there is no doubt that the amending decision creates a ground for the curtailment of the term of office of a member of the Staff Committee which did not exist when Mrs Licata was elected. However, as a matter of principle, new rules apply immediately to the future effects of a situation which arose under the old rule. The application of the amending decision to the remainder of Mrs Licata's term of office does not therefore constitute a breach of the principle that measures must not be retroactive.

32 It follows that the third submission is without foundation.

Costs

33 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those rules, institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (First Chamber)

hereby:

- (1) Dismisses the application;
- (2) Orders the parties to bear their own costs.

Joliet

Bosco

Schockweiler

Delivered in open court in Luxembourg on 10 July 1986.

P. Heim
Registrar

R. Joliet
President of the First Chamber