

Case 64/86 R

Giovanni Sergio

v

Commission of the European Communities

(Official — Suspension of operation of a decision)

Summary

Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for their adoption
(Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT
OF THE SECOND CHAMBER OF THE COURT
14 March 1986 *

In Case 64/86 R

Giovanni Sergio, an official of the Commission of the European Communities, represented and assisted by E. Arendt, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 34 B rue Philippe-II,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, D. Gouloussis, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

* Language of the Court: French.

APPLICATION for the adoption of an interim measure suspending the operation of the Commission's decision of 12 December 1985 and provisionally admitting the applicant to the training courses for Competition No COM/A/8/84 starting on 17 March 1986,

THE PRESIDENT OF THE SECOND CHAMBER,

acting under Articles 9 (4) and 96 of the Rules of Procedure,

makes the following

ORDER

- 1 By an application lodged at the Court Registry on 6 March 1986 Giovanni Sergio, an official of the Commission in Grade B 2, brought an action seeking principally the annulment of the decision of the Head of the Recruitment Division of 12 December 1985 and, consequently, his admission to the training courses beginning on 17 March 1986 in connection with Competition No COM/A/8/84, an internal competition based on qualifications and tests held for the purpose of constituting a reserve list.
- 2 By an application for the adoption of interim measures lodged on the same day, the applicant asked the Court, pursuant to Article 91 (4) of the Staff Regulations of Officials, to suspend the operation of the said decision and sought his provisional admission to the aforementioned training courses.
- 3 Notice of the application for the adoption of that interim measure was served on the Commission, which submitted written observations. Since the written statements contained all the information necessary to rule on the application for the adoption of an interim measure, it was not necessary to hear the parties' oral arguments.
- 4 In June 1984 the applicant, who has been an official of the Commission since 9 December 1967, submitted his application to enter Competition No COM/A/8/84, a competition based on qualifications and tests for the constitution of a

reserve list of administrators (Career Bracket A7-A6). The applicant was admitted to the tests but was informed by letter of 12 December 1985 from the Head of the Recruitment Division that the Selection Board was unable to admit him to the next stage of the procedure, namely the training courses. The Selection Board judged each candidate on the basis of overall factors and after comparing their merits admitted those whom it judged to be the best qualified.

- 5 Since he considered that that decision did not contain an adequate statement of reasons and that it infringed Article 25 of the Staff Regulations of Officials and Articles 1 and 5 of Annex III to the Staff Regulations, the applicant lodged a main application as well as this application for the adoption of interim measures.
- 6 Under Article 83 (2) of the Rules of Procedure, the applicant is required to state the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.
- 7 In this regard the applicant refers to the submissions set out in his main application and emphasizes that the situation is urgent within the meaning of the aforementioned provision inasmuch as on 17 March 1986 the Selection Board intends to hold theoretical and practical training courses in which all candidates admitted to the competition must take part. At the end of the courses, each candidate will have to appear before the Selection Board to answer questions on a report submitted by him dealing with the period of practical training and the various training courses attended by him. If he is prevented from taking part in those courses, he will, he alleges, be prevented from taking part in the interviews provided for in the competition notice.
- 8 In its written observations, the Commission contends that the Court should dismiss the application for the adoption of an interim measure. It maintains that the applicant will not suffer irreparable harm if the judgment on the substance of the case is delivered after the theoretical and practical training courses have ended. If the Court grants the main application and annuls the contested decision, the Commission will have to re-open the competition as far as the applicant is concerned and the Selection Board would reconsider his application in order to

comply with the judgment. Consequently, the training courses in question could be held for a single person. The Commission also maintains that it is not possible to grant as an interim measure a measure which would deprive the main proceedings of their purpose.

- 9 In order to resolve the problem raised by the application for the adoption of interim measures, it must be noted that it appears from the Commission's observations that the applicant will not suffer irreparable harm if the decision on the substance of the case is delivered after the training courses have ended. The Commission has stated that it is prepared to re-open the competition as far as the applicant is concerned if he is successful in the main proceedings. The applicant has not therefore specified the circumstances giving rise to the urgency of his application for the adoption of interim measures.
- 10 Consequently, that application must be dismissed.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER,

by way of interim decision,

after hearing the views of the Advocate General,

hereby orders as follows:

- (1) **The application for the adoption of interim measures is dismissed;**
- (2) **The costs are reserved.**

Done and ordered at Luxembourg on 14 March 1986.

P. Heim
Registrar

K. Bahlmann
President of the Second Chamber