ORDER OF THE PRESIDENT OF THE SECOND CHAMBER
OF THE COURT
OF 2 JULY 1980 [1]

Mariette Turner, née Krecke, v Commission of the European Communities

Case 129/80 R

In Case 129/80 R

MARIETTE TURNER, NÉE KRECKE, an official of the Commission of the European Communities, residing in Brussels 1050, represented by Georges Vandersanden of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nico Edon, Advocate, 2 Rue Goethe,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jean-Pierre Delahousse, Principal Legal Adviser, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the adoption of interim measures to suspend the operation of a decision imposing a compulsory transfer,

THE PRESIDENT OF THE SECOND CHAMBER OF THE COURT, IN LIEU OF THE PRESIDENT OF THE COURT WHO IS UNABLE TO ATTEND,

has made the following

1 — Language of the Case: French.

ORDER

Facts and Issues

On 12 July 1978 the defendant institution decided to re-organize its medical branch in which the applicant, Mrs Turner, a doctor of medicine, was employed as a Principal Administrator in Grade A 4; as part of that re-organization a proposal was first made, and then communicated to the applicant, that she should assume responsibility for the socio-medical sector which was being set up; this was done in the first place by means of a note from the Director-General of Personnel and Administration dated 4 May 1979; and secondly by a decision of the Commission of 8 June 1979 transferring the applicant from the Medical Division to the specialized unit for medical services for the Brussels staff. The applicant lodged an application with the Court for the annulment of those decisions (Case 59/80).

The head of the medical branch, the Director-General for Personnel and the relevant Commissioner all intervened in turn, and finally the applicant was compulsorily transferred, by a decision of Mr Tugendhat, a member of the Commission, which took effect on 1 June 1980 and of which the applicant was notified on 23 May 1980, to a vacant post of Principal Administrator at the Directorate-General for Research, Science and Education. The applicant brought a further action against that decision, seeking to obtain its annulment together with compensation for non-material damage (Case 129/80).

In a separate document annexed to that main application, the applicant also submitted an application for the adoption of interim measures asking the Court "to order ... as soon as may be, the suspension of the operation of the decision imposing a compulsory transfer which was adopted by Mr Tugendhat on 23 May 1980; and to order the defendant to pay the costs". Several grounds were put forward by the applicant in support of the application for the adoption of interim measures:

— The compulsory transfer to a post where "some knowledge of medicine" is merely a subsidiary requirement will prevent her from practising medicine as she has been doing for 25 years;

— The measure is capable of causing irreparable harm to the applicant should she wish in future to return to a post as a full-time doctor outside the EEC;

— The measure really amounts to prohibiting her from practising medicine, a serious and degrading disciplinary measure which lies exclusively within the competence of the medical council; it casts a slur on the applicant's professional ability and reputation;

— The Commission could have transferred the applicant to another post without preventing her from practising medicine;

— The measure was adopted with undue haste and makes it impossible to hand over current files in good order;

— The measure is the most recent evidence of the attitude consistently adopted by the defendant with respect to the applicant, the purpose of which is to relieve the applicant, against her wishes, of responsibility in the medical sphere (see Case 59/80);

— The disputed decision was adopted in questionable circumstances while the applicant was on leave and she heard of it only by chance, so that she might otherwise not have been in a position to put forward an effective request for the operation of the measure in question to be suspended;

— Lastly, the "excessively short time" allowed to the applicant for protecting her rights, and the "grave, and even irreversible harm" inflicted by the compulsory transfer are grounds for granting the application as a matter of urgency.

In a letter of 9 June 1980 the applicant informed the Court that on presenting herself on 2 June to receive instructions concerning her new duties, and having taken up her post on 4 June after handing over the current files, she had ascertained that:

— The post is oriented principally towards medical research, not medical practice,

— The post requires fluent English whereas the applicant's principal languages are French and German,

— The work is more suited to a technical translator than to a doctor, so that it will be possible for the applicant to be blamed at some future date for inefficiency or lack of goodwill.

In reply, the *defendant* submitted observations and a letter dated 13 June with special reference to the arguments set out by the applicant in her letter of 9 June. After summarizing the background of the Commission's medical branch, the defendant contends that the President of the Second Chamber should "reject the application as being without foundation, order the applicant to pay the costs, reserving all its rights", and submits the following principal arguments in support of its request:

— The applicant's claim that the measure which has been adopted will prevent her from exercising the medical profession is false, for she was not recruited for that purpose, having performed for a number of years, prior to her appointment to the medical branch, duties such as drafting the Monthly Radiological Protection Bulletin, and medical and statistical projects; the decision transferring her returned her to duties of an administrative nature such as those which she had carried out previously, which means that the measure which has been adopted can in no way be disciplinary;

— The transfer which has been made does not seriously call in question her ability or reputation and does not occasion her any irreparable harm, no evidence having been submitted in that respect; there is no reason not to await the outcome of the main action;

— An official's posting must depend solely on the interests of the service, subject to the rights of the official under the Staff Regulations; the requirements of the special medical services are to be determined by the administration alone;

— The applicant's posting to a department responsible for organizing the work carried out by the Committee on Medical Research and Public Health is suited to her abilities and will not cause her any "irreparable harm";

— The way in which the disputed decision was drawn up and communicated is in line with the usual practice and was preceded by a preliminary discussion with the Director-General for Personnel;

— Whether or not the decision transferring her may be contrary to the applicant's professional interests is a matter to be decided upon examination of the substance of the case and should not be dealt with by means of a decision on an application for the adoption of interim measures;

— The tasks which the applicant will have to perform as part of her new duties (participation in organizing the work of the Committee on Medical Research and Public Health, and inter-departmental liaison to co-ordinate activities in the health sector) are not in any case such as might be performed by a technical translator, but are in keeping with Mrs Turner's kind of training; other doctors participate in such work;

— It is possible to use Mrs Turner's knowledge of languages and in one of the periodic reports on her it is indicated — in a remark added by the applicant herself — that she had worked on a project between 1967 and 1969 where English was the predominant language used.

Decision

1 Examination of the arguments put forward by the parties shows that it will be advisable, for the purposes of the application for the adoption of interim measures, that consideration should be restricted to those grounds on the basis of which it will be possible to decide whether there is urgency and whether immediate implementation of the disputed decision is capable of having consequences which will be irreversible before a decision can be made on the substance of the case.

2 From this point of view it should be observed, first, that the applicant's transfer does not entail either a downgrading or a reduction in salary for her, and she does not rely on damage of that kind in order to obtain the suspension of operation which has been requested.

3 What the applicant does rely on, however, is the irreparable harm which she claims she will suffer if it is made impossible, even temporarily, for her to practise medicine. It is not disputed, however, that the applicant practised medicine at the Commission — in the way in which she uses the term, that is to say, apparently, having responsibilities connected with the treatment of patients or personal examination of individuals — only after she had been engaged to occupy an administrative post of her own free will, as is shown by her contract of employment of 22 December 1965 and the decision to establish her dated 1 August 1968. Without prejudice to any influence those facts may have as far as the decision to be taken by the Court regarding the substance of the case is concerned, in the context of the application for the adoption of interim measures it must be concluded therefrom that the assignment to duties which do not include direct medical practice is not capable of causing irreparable harm to Mrs Turner pending the outcome of the litigation in which she is engaged with the Commission.

4 The fact that she has been temporarily asked to carry out duties comparable to those which she had previously applied to perform does not, moreover, amount to a disciplinary measure and does not in any way call Mrs Turner's reputation in question; no evidence has been put forward in support of such allegations.

5 The fact that she has to use English in her new duties would not appear necessarily to occasion any particular embarrassment to Mrs Turner in view of the fact that she herself pointed out in an earlier periodic report that she was using that language in her previous work.

6 The remaining arguments which have been submitted relate to the substance of the case and cannot be taken into consideration on the hearing of an application for the adoption of interim measures; it is accordingly necessary to find that there is no question of irreparable harm and that there is no need for the adoption of interim measures as a matter of urgency.

7 The application for the adoption of interim measures must therefore be dismissed.

Costs

8 In the circumstances costs must be reserved.

On those grounds,

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

by way of an interlocutory decision,

hereby orders as follows:

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

2. **Costs are reserved.**

Luxembourg, 2 July 1980.

A. Van Houtte
Registrar

A. Touffait
President of the Second Chamber