Case 293/84 R

Vincenzo Sorani and Others
v
Commission of the European Communities

Summary

Application for the adoption of interim measures — Suspension of operation — Conditions governing the grant of such a measure
(Rules of Procedure, Art. 83 (2))

An application to suspend the operation of any measure adopted by the institutions will only be granted if the factual and legal grounds relied on establish a *prima facie* case for the measures being sought. Moreover, there must be an urgent need for the measures in the sense that it must be necessary that they be adopted and take effect before judgment is delivered on the substance of the case in order to avoid serious and irreparable damage to the party seeking their adoption. Finally, such measures must be provisional, that is to say, they must not prejudge the decision on the substance of the case.

ORDER OF THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT
17 January 1985 *

In Case 293/84 R

Vincenzo Sorani, 7 Rue Oppenheim, Luxembourg,
André Scholtes, 42 Rue Laach, Niederanven,
Monique Simeoni, 22 Rue des Merisiers, Mamer,

* Language of the Case: French.

Jean Kohll, 33 Rue Kecker, Ehnen,
Giuseppe d'Elicio, 8 Rue des Merisiers, Mamer,
Alice Nickles-Krier, Palzem-Kreuzweiler, Germany,
Angelo Perlini, 11 Boulevard Pierre-Dupong, Luxembourg,
Charlotte Bour, 6 Avenue Pasteur, Luxembourg,
Colette Bron, 173 Val-Sainte-Croix, Luxembourg,
Caroline Van Den Eynde, 42 Avenue Pasteur, Luxembourg,
Arlette Serre, 27 Route d'Esch, Luxembourg,

officials of the Commission of the European Communities, represented by Mr Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18A rue des Glacis,

applicants,

v

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

defendant,

APPLICATION under Article 83 of the Court's Rules of Procedure for the suspension of the procedure in Competition No COM/B/2/82 until such time as the Court has given its decision on the application brought by the applicants against the decision not to admit them to the tests for that competition,

THE PRESIDENT OF THE FIRST CHAMBER,

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

makes the following

ORDER

Facts

In July 1982, the Commission published the Notice of Competition for Internal Competition No COM/B/2/82, which was to be held on the basis of qualifications and tests for the purpose of constituting a reserve list of administrative assistants/secretarial assistants/technical assistants, whose career bracket covers Grades 5 and 4 of Category B.

The applicants, officials of the Commission in Category C, submitted their candidatures and were admitted to the competition, but were later informed, by letters from the Head of the Recruitment Division dated 15 June 1984, that the Selection Board considered that it could not place their names on the list of candidates admitted to the tests. When the applicants sought a more detailed statement of the reasons for the decision not to admit them, the administration informed them that the Selection Board had decided to admit to the tests 'only those candidates who already performed duties at that level or had all the qualifications required to perform them'.

By an application brought on 5 December 1984, the applicants asked the Court to annul the decision not to admit them to the tests for Competition No COM/B/2/82.

On the same date, the applicants asked the Court of Justice, in a separate document submitted under Article 83 of the Rules of Procedure, to 'decide and order that the procedure in Competition No COM/B/2/82 be suspended until a decision has been given on the substance of the case.' They contended that, if that were not done, they would suffer irreparable damage.

In its observations submitted on 19 December 1984, the Commission contended that the application contained no *fumus boni juris* and that there was no urgency justifying the suspension, since the Court of Justice could annul a decision not to admit candidates to tests and order that the competition be reopened for the candidates concerned.

Decision

1 By application lodged at the Court Registry on 5 December 1984, Vincenzo Sorani and 10 other officials of the Commission of the European Communities brought an action for annulment of the decision of the Selection Board in Competition No COM/B/2/82 not to admit them to the tests for that competition.

2 In a separate document, submitted on the same day under Article 83 *et seq.* of the Rules of Procedure, the same applicants asked the Court to 'decide and order that the procedure in Competition No COM/B/2/82 be suspended until a decision has been given on the substance of the case'.

3 The admissibility of the application for suspension is not disputed.

4 According to settled case-law, an application to suspend the operation of any measure adopted by the institutions will only be granted if the factual and legal grounds relied on establish a *prima facie* case for the measures being sought. Moreover, there must be an urgent need for the measures, in the sense that it must be necessary that they be adopted and come into effect before judgment is delivered on the substance of the case in order to avoid serious and irreparable damage to the party seeking their adoption. Finally, such measures must be provisional, that is to say, they must not prejudge the decision on the substance of the case.

5 In its observations submitted under Article 84 (1) of the Rules of Procedure, the Commission states that there is no *fumus boni juris* in this case because the Selection Board for the competition scrupulously respected a notice of competition drafted by the appointing authority in accordance with the rules laid down in the Staff Regulations. It adds that there are also no circumstances justifying adoption of urgent measures since, according to settled case-law, the Court can annul the decision of a selection board not to admit a candidate to the tests and at the same time order that the competition be reopened as regards that candidate.

6 With regard to the existence of a *fumus boni juris*, the President considers that the submissions made by the applicants in support of their application do not, at first sight, seem particularly solid. The applicants rely essentially on two submissions: first, that the intervention of the candidates' superiors, provided for by the notice of competition, was unlawful and, secondly, that no adequate statement of reasons was given for the decision. Although the first of those submissions, if it were accepted, would lead to the notice of competition being declared unlawful, it cannot be advanced, as the applicants seek to do, for the purpose of obtaining admission to the tests on the basis of criteria other than those laid down in the notice of competition. With regard to the submission that no adequate statement of reasons was given, account must be taken of the fact that, according to the case-law of the Court, the requirement to state reasons must be assessed according

to the different levels and types of competition and, in particular, according to the number of candidates taking part in each of them.

7 With regard to the risk that the applicants might suffer irreparable damage if the judgment on the substance of the case were delivered at a time when it was impossible to put it into effect, it should be noted that, according to the terms of the Notice of Competition, Competition No COM/B/2/82 is being held for the purpose of constituting a reserve list of administrative assistants/secretarial assistants/technical assistants, that that reserve list is being constituted for the purpose of filling vacant or newly created posts in that category and career bracket within the Commission and that the placing of candidates' names on the reserve list makes them eligible for appointment, as and when required by the needs of the service, to posts which are not filled by way of transfer of officials.

8 In those circumstances, it must be concluded that the applicants run no risk of suffering irreparable damage whilst the reserve list on which their names could be placed if they were admitted to, and were successful in, the tests remains valid.

9 It must be concluded from the foregoing considerations that the application should not be granted.

On those grounds,

by way of interim decision,

THE PRESIDENT OF THE FIRST CHAMBER,

hereby orders as follows:

1. **The application is dismissed.**

2. **Costs are reserved.**

Luxembourg, 17 January 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber