ORDER OF THE PRESIDENT OF THE FIFTH CHAMBER OF THE COURT OF FIRST INSTANCE
1 August 1991 *

In Case T-52/91 R

Carine Smets, a former member of the temporary staff of the Commission of the European Communities, residing at Overijse (Belgium), represented by G. van der Wal, of the Brussels Bar, with a right of audience before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-rue,

applicant,

v

Commission of the European Communities, represented by Joseph Griesmar, Legal Adviser, and P. Lafili, a member of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for suspension of the operation of the defendant's decision, notified to the applicant by letter of 11 March 1991 and purporting to terminate, with effect from 12 June 1991, the contract appointing the applicant as a member of the temporary staff for an indefinite period,

THE PRESIDENT OF THE FIFTH CHAMBER OF THE COURT OF FIRST INSTANCE,

replacing the President of the Court of First Instance pursuant to the second paragraph of Article 106 and the first paragraph of Article 9 of the Rules of Procedure,

makes the following

* Language of the case: Dutch.

Order

Facts and procedure

1 By application lodged at the Court Registry on 27 June 1991, the applicant brought an action, pursuant to the combined provisions of Article 90(2) of the Staff Regulations of Officials of the European Communities (hereinafter referred to as 'the Staff Regulations') and of Article 46 of the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Conditions of Employment'), for the annulment of the defendant's decision, notified to the applicant by letter dated 11 March 1991 and purportedly terminating, with effect from 12 June 1991, the contract appointing the applicant as a member of the temporary staff for an indefinite period.

2 By a separate document lodged at the Court Registry on the same day, the applicant also made an application under Articles 185 and 186 of the EEC Treaty, requesting the Court of First Instance to suspend the operation of the decision dismissing her and to order the continuation of the performance of the applicant's contract of employment as a member of the temporary staff pending the outcome of the main proceedings.

3 The defendant submitted its observations on 8 July 1991. The parties presented oral argument on 30 July 1991.

4 Before the merits of the present application for interim measures are considered, a brief account should be given of the background to the dispute between the parties.

5 With effect from 1 March 1984, the applicant was accepted for a period of training in the Joint Interpreting and Conference Service (hereinafter referred to as 'the Joint Service') of the Commission. The contract was initially for a period of two months. It was capable of being renewed twice for further periods of two months each, on condition that the applicant passed the examinations held prior to each such extension.

6 Having clearly passed the tests held during the training period, the applicant was successful in the examination which she sat at the end of that period. She was then granted a contract of employment appointing her as a member of the temporary staff with effect from 1 October 1984 and served in the position of interpreter (Category LA, Grade 8) in the Joint Service in Brussels. The appointment was of the type referred to in Article 2(b) of the Conditions of Employment. The contract was for a period of two years.

7 During the course of that contract, the applicant passed an internal competition, with the result that she moved up to Grade 7 of Category LA. She was promoted to that grade as an interpreter and as a member of the temporary staff, with effect from 1 October 1985.

8 That contract was extended, with effect from 1 January 1987, until 31 December 1987.

9 The applicant was subsequently granted a contract of employment appointing her a member of the temporary staff for a period of six months from 1 January 1988 and served in the position of interpreter (Category LA, Grade 7) in the Joint Service. This appointment was of the type referred to in Article 2(a) of the Conditions of Employment.

10 That contract was extended by letter dated 24 May 1987 until 31 December 1988.

11 That contract was then extended for an indefinite period by letter dated 8 November 1988. That letter contained in particular the following passage: 'The conditions of employment and the other terms of the contract remain unchanged. It goes without saying that you should register as a candidate in the first open competition organized for the recruitment of interpreters/assistant interpreters which it is open to you to enter; in the event of your being unsuccessful in such a competition, your contract will be terminated.'

12 In June 1989 the Commission published two notices of internal competition; the first competition, bearing the reference number COM/LA/1/89, was organized with a view to the drawing up of a reserve list for the recruitment of interpreters (LA 7/6), and the second, bearing the reference number COM/LA/2/89, was

organized with a view to the drawing up of a reserve list of assistant interpreters (LA 8). The applicant registered as a candidate in competition COM/LA/2/89. On 25 November 1990 she took part in the oral part of the competition and sat tests in consecutive interpretation from French into Dutch, English into Dutch and Dutch into French. She was not admitted to the other tests in the competition.

13 By letter dated 8 March 1991, the applicant was informed that the selection board had not placed her name on the list of suitable candidates. The applicant lodged an appeal against that decision in the Court of First Instance, which was registered as Case T-44/91. That case is still pending.

14 By letter dated 11 March 1991, the Commission's Director-General of Personnel and Administration informed the applicant that the appointing authority had decided, pursuant to Article 5 of the contract of employment, to terminate her employment as a member of the temporary staff. The said employment was to terminate, with three months' notice, at the close of office hours on 12 June 1991.

15 The period allowed to the appointing authority to reply to the complaint submitted by the applicant on 7 June 1991 against the termination of her employment as a member of the temporary staff has not yet expired. Pursuant to Article 91(4) of the Staff Regulations, the proceedings in the main action before the Court of First Instance are suspended until such time as an express or implied decision rejecting the complaint has been taken.

Law

16 Pursuant to Article 104(2) of the Rules of Procedure, an application to suspend the operation of any measure adopted by an institution must clearly state the subject matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measure applied for.

17 The first question to be decided is whether the interim measure applied for is so urgently required that it needs to be granted before the decision is given on the main application, in order to prevent the applicant from suffering any serious and irreparable damage.

18 The applicant contends in this regard that, since the decision on the main application cannot be expected to be made until some as yet indeterminate time in the future, she is bound to suffer serious and irreparable damage. She asserts that the significant loss of income which she is suffering in the interim is seriously disadvantageous to her and is causing her serious harm in view of the contractual obligations which she has entered into and the level of income which she has been accustomed to receive over a period in excess of seven years. The applicant stresses that, whilst in other cases the threat of financial loss may not have been regarded as constituting serious and irreparable damage, the position is different in staff cases, or at any rate in the instant case, since what is involved is the income of a private individual who is directly affected by a significant loss of income, albeit of a temporary nature. Furthermore, the applicant attaches the greatest importance to the potential risk that her professional skills may diminish if her period of inactivity is further prolonged. She contends that it would subsequently require a disproportionate amount of hard work on her part in order to make up for the lack of day-to-day practice and experience. Even supposing that the applicant is able to find employment outside the Commission — which is far from certain — that would not, she says, constitute a real alternative solution, since the nature of any available jobs is very different. The applicant does not consider that the Commission will suffer any damage if she continues to carry out her duties pending a decision on the substance of the case.

19 The defendant maintains, on the other hand, that the case does not involve any urgency, given that the applicant waited until 26 June 1991, that is to say until after the date on which her dismissal took effect, before applying for the grant of interim measures. Furthermore, it considers that the financial loss suffered by the applicant as a result of the loss of the income which she was receiving in her capacity as a member of the temporary staff does not constitute serious and irreparable damage. Indeed, the applicant is entitled, pursuant to Article 28a(3) of the Conditions of Employment, to an unemployment allowance. With regard to the loss of professional skills pleaded by the applicant, the defendant contends that the latter is underestimating the job opportunities outside the Commission. It further points out that the applicant has not yet applied to the Joint Service for work as a freelance interpreter.

20 The Court has consistently held that, in principle, damage which is purely pecuniary cannot be regarded as irreparable, or even as being difficult to repair, since it can form the subject-matter of financial compensation at a later date.

However, it is incumbent upon the Court — taking into account the interest of the institution concerned in seeing that the disputed decision is carried into effect — to investigate the individual circumstances of each case and to determine in accordance therewith whether the immediate implementation of the decision causes the applicant any damage which is incapable of being repaired even if the decision falls to be annulled in the main proceedings.

21 Article 28a(1) of the Conditions of Employment provides that a former member of the temporary staff who is unemployed when his service with an institution of the European Communities has been terminated is to be eligible, under certain conditions, for a monthly unemployment allowance. By virtue of Article 28a(3), the unemployment allowance is fixed at 60% of the basic salary for an initial period of twelve months, 45% of the basic salary from the 13th until the 18th month and 30% of the basic salary from the 19th until the 24th month, the amounts thus calculated being neither less than BFR 30 000 nor more than BFR 60 000. Pursuant to Article 28a(5) of the Conditions of Employment, a former member of the temporary staff who is eligible for the unemployment allowance is to be entitled to the family allowances provided for in Article 67 of the Staff Regulations and, under certain conditions, to insurance cover against sickness for himself and for members of his family.

22 The applicant pointed out at the hearing that her net monthly earnings were being reduced from approximately BFR 122 000 to a total of BFR 60 000 (unemployment allowance, not counting the family allowances and the dependent child allowance) and that cash difficulties would result from this. The applicant stated, moreover, that her standard of living would decline.

23 Whilst the Court can accept the applicant's contention that she will suffer a relatively significant loss of earnings, this does not necessarily lead it to accept unreservedly that she is bound to suffer serious and lasting harm, even if, as she maintains, her monthly mortgage repayments amount to BFR 50 000. Indeed, the defendant confirmed at the hearing that the applicant would receive each month the unemployment allowance and the family allowances provided for under the regulations in force. Moreover, it neither appears nor has been alleged by the

applicant that the loss of income which she is suffering is actually causing her serious financial problems.

24 The applicant contended in addition that she would suffer serious and lasting damage by reason of the partial loss of her professional skills as an interpreter if the period for which she was unable to carry on her profession were further prolonged, and that it would require a disproportionate amount of hard work on her part in order to make up for her lack of practice.

25 It is impossible to accept, on the basis of this argument, that the applicant will really suffer any serious and lasting damage. Indeed, the applicant indicates that it would in principle be possible for her to achieve once again the same level of professional skill as an interpreter following a period of inactivity. In addition to this, there is the fact that she is able to limit such loss of skill by working within the Commission or outside it, and possibly by working for the Joint Service as a freelance interpreter. However, as she indicated at the hearing, the applicant has not applied to the Joint Service for work as a freelance interpreter. It must also be taken into account in this regard that the temporarily reduced availability of the applicant as an interpreter, resulting from the loss by her of part of her professional skills, will in particular be prejudicial to the defendant in the event that the decision at issue is annulled in the main proceedings.

26 It follows from the foregoing that the suspension of the operation of the decision to terminate the applicant's employment contract with effect from 12 June 1991, which forms the subject matter of this application, is not in any way a matter of urgency. This application must therefore be dismissed, without its being necessary to consider the other arguments relied on by the applicant.

27 The costs should be reserved until a final decision is given in the main proceedings.

On those grounds,

THE PRESIDENT OF THE FIFTH CHAMBER,

replacing the President of the Court of First Instance and by way of interim decision,

hereby orders as follows:

1. **The application for the suspension of the operation of the decision relating to the termination of the applicant's employment contract with effect from 12 June 1991 is dismissed;**

2. **The costs are reserved.**

Luxembourg, 1 August 1991.

M. Fierstra
acting Registrar

C. P. Briët
President of the Fifth Chamber