ORDER OF THE PRESIDENT OF THE COURT
20 MAY 1983 [1]

Charles Lux
v Court of Auditors of the European Communities

Case 69/83 R

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

In Case 69/83 R

CHARLES LUX, an official of the Court of Auditors of the European Communities, residing at 17 Rue Bertholet, Luxembourg, represented by Edmond Lebrun of the Brussels Bar, with an address for service in Luxembourg at the applicant's residence,

applicant,

v

COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES, represented by its Secretary, Jean-Aimé Stoll, acting as Agent, assisted by Lucette Defalque of the Brussels Bar, with an address for service in Luxembourg at its seat, 29 Rue Aldringen,

defendant,

APPLICATION for the adoption of an interim measure suspending the operation of a decision of the Court of Auditors changing the allocation of posts as between the President's Sector and the Staff and Operational Expenditure Sector and of a decision of the President of the Court of Auditors reassigning the applicant to the latter sector,

THE PRESIDENT OF THE SECOND CHAMBER, replacing the President of the Court pursuant to Article 96 (1) of the Rules of Procedure,

makes the following

1 — Language of the Case: French.

ORDER

Facts and previous history of the dispute

1. By application registered at the Court on 28 April 1983 Charles Lux, an official of the Court of Auditors of the European Communities in Grade A 5, brought an action for the annulment of the decision of the Court of Auditors changing the allocation of posts as between the President's Sector and the Staff and Operational Expenditure Sector and transferring a post of principal legal administrator from the President's Sector to the Staff and Operational Expenditure Sector and for the annulment of a decision of the President of the Court of Auditors changing the applicant's posting and reassigning him to the Staff and Operational Expenditure Sector.

2. By an application for the adoption of an interim measure brought on the same day the applicant sought the suspension of operation of those decisions pursuant to Article 91 (4) of the Staff Regulations of Officials.

3. It may be seen from the file that before the decisions in question were adopted the applicant was assigned to the Sector of the President of the Court of Auditors and that he was a member of the Legal Department in that sector.

4. On 24 March 1983 the Court of Auditors decided to change the allocation of posts provided for in the budget as between the President's Sector and the Staff and Operational Expenditure Sector. Pursuant to that decision it transferred a post of principal legal administrator from the President's Sector to the Staff and Operational Expenditure Sector. By decision of 14 April 1983 the President of the Court of Auditors changed the applicant's posting by reassigning him, with effect from 15 April 1983, from the President's Sector to the Staff and Operational Expenditure Sector.

5. In his application the applicant puts forward five submissions claiming lack of competence of the authority which decided to transfer his post, failure to state the grounds on which the decision is based, infringement of the guarantees contained in Articles 4, 7 and 29 of the Staff Regulations relating to the termination of the posting of an official and the relationship between his grade and post, disregard of the interests of the service in breach of Article 7 of the Staff Regulations and, finally, misuse of powers.

6. The substance of those contentions is repeated in the application for the adoption of interim measures as grounds for their adoption.

7. To establish the urgency for a suspension of the operation of the decisions taken the applicant gives particular emphasis to three facts:

That his reassignment from the President's Sector, which is an administrative sector, to the Staff and Operational Expenditure Sector, which is an auditing sector, involves his assignment to duties which are inconsistent with or certainly different from those duties for the performance of which he was recruited and which correspond to his professional experience;

That there is a danger that his transfer will have an unfavourable effect on his next periodic report since that report must be drawn up in respect of duties which he would have the right to refuse to perform or, if he should perform them, which he would perform in difficult and unsatisfactory circumstances because they do not correspond to his qualifications;

That once the decision to transfer him has been implemented it would be very difficult to revert to the previous situation regard being had to the fact that the post in the Legal Department of the President's Sector, to which he was previously assigned, was the sole such post and steps have already been taken to replace him in that post by another official.

8. For its part the Court of Auditors disputes the reasons put forward by the applicant to demonstrate that his application is, *prima facie*, well founded. It recalls that at the beginning of his career the applicant performed the duties of a lawyer in the sector auditing the staff expenditure of the institutions and that after his assignment to the Legal Department of the President's Sector he continued to deal with personnel matters. The Court of Auditors therefore considers that the new post to which the applicant has been assigned corresponds exactly to the description of his duties and to his personal abilities.

9. The Court of Auditors also disputes the urgency of the application for the adoption of interim measures. It draws attention to the fact that in the event of the applicant's action being successful the transfer of a post to the Staff and Operational Expenditure Sector will be cancelled, as will the applicant's new assignment, so that he will revert to his post in the President's Sector. For the applicant's new assignment to be maintained neither amounts therefore to an irreversible situation nor does it cause him any damage whatsoever since it does not affect either his grade or his material position.

10. Since the parties have stated their respective points of view fully in their written statements and have presented all documents which must be taken into account in order that judgment may be given on the application for the adoption of interim measures, it does not appear to be necessary to conduct any preparatory inquiry or to hear the parties' oral arguments.

Decision

11 By virtue of Article 83 (2) of the Rules of Procedure it is for the applicant to establish, on the one hand, the circumstances giving rise to urgency and, on the other hand, the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.

12 It is sufficient to state in this case that the applicant has not submitted any evidence to show the urgency of the measure applied for and there is no need to consider the second requirement referred to in the aforementioned provision.

13 It would appear, in fact, from the information received at this stage, that as the applicant has been reassigned together with his post and as both decisions adopted for that purpose are the subject of the proceedings for annulment, if he is successful in those proceedings he will automatically revert to the position as it was prior to the contested decisions.

14 The application for the suspension of the operation of the contested decisions must therefore be dismissed.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER, replacing the President of the Court pursuant to Article 96 (1) of the Rules of Procedure,

hereby orders as follows:

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

2. The costs are reserved.

Luxembourg, 20 May 1983.

P. Heim
Registrar

P. Pescatore
President of the Second Chamber,
Acting as President