ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
21 November 1994 *

In Case T-368/94 R,

Pierre Blanchard, an official of the Commission of the European Communities, residing in Brussels, represented by Marc-Albert Lucas, of the Liège Bar, with an address for service in Luxembourg at the Chambers of Evelyne Korn, 21 Rue de Nassau,

applicant,

v

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION to postpone or suspend elections to the Brussels local section of the Staff Committee of the Commission,

* Language of the case: French.

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

1 By an application lodged at the Court Registry on 11 November 1994, the applicant brought an action under Article 91(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') for the annulment of various decisions taken by the electoral office and by its president on 3 and 8 November 1994 in the context of the procedure for elections to the Brussels local section of the Staff Committee of the Commission, whereby two lists, both submitted by the same trade union, the European Public Service Union, were excluded from participation in those elections.

2 By a separate document lodged at the Court Registry on the same day, the applicant also submitted an application under Article 91(4) of the Staff Regulations for the postponement or suspension of the elections to the Brussels local section of the Staff Committee, due to take place on 22, 23 and 24 November 1994.

3 The Commission submitted its observations on the present application for interim measures on 17 November 1994.

4 The parties presented oral argument on 18 November 1994.

5 Before examining whether the present application for interim measures is well founded, it will be helpful to set out the facts which gave rise to the dispute, as they emerge from the documents lodged by the parties and the arguments they presented at the hearing.

6 Article 9 of the Staff Regulations provides that a Staff Committee shall be set up within each institution. Under the second paragraph of Article 1 of Annex II to the Staff Regulations, the conditions for election to that committee are to be laid down by the general meeting of officials of each institution.

7 On 15 September 1992, under the power conferred upon it by the article cited above, the general meeting of Commission officials employed in Brussels adopted a set of electoral rules, which were subsequently renewed, without amendment, by a new general meeting of 20 September 1994 for the elections to the Brussels local section of the Staff Committee of the Commission scheduled to take place on 22, 23 and 24 November 1994.

8 Article 2 of the electoral rules establishes an electoral office, whose tasks include, in particular, the checking of nominations and rejection of those which fail to satisfy the conditions laid down in the rules (Article 7). Article 6 of the electoral rules provides that nominations are to be submitted in the form of lists, each list to contain no more than 27 full members and 27 alternates.

9 On 18 October 1994, the European Public Service Union, a trade union or staff association (hereinafter 'union') of European officials within the meaning of Arti-

cle 24a of the Staff Regulations, lodged with the electoral office two lists of 27 pairs of candidates under the name of the European Public Service Union. One of them, headed 'European Public Service Union', showed the union's vice president, L. Schubert, at the head of the list. The other, under the designation 'Research/European Public Service Union', was headed by the union's president, P. Blanchard. That list partially consisted of officials and other servants in the scientific or technical services of the Communities, within the meaning of Articles 92 to 101 of the Staff Regulations.

10 As appears from a report of 20 October 1994, at its meeting on 19 October the electoral office accepted the seven lists submitted to it, including the two lists submitted by the European Public Service Union.

11 On 20 and 24 October, two candidates whose names appeared on competing lists lodged a complaint with the electoral office against the acceptance of the two lists of the European Public Service Union.

12 On 3 November 1994 the president of the electoral office informed the political secretary of the European Public Service Union that the office had taken the view that the complaints were admissible, that, on the strength of an opinion from the Commission's Legal Service, he considered the submission of two lists by the same union to be contrary to the electoral rules, and that he was therefore requesting the European Public Service Union to submit a single list.

13 On 7 November 1994 the European Public Service Union agreed to withdraw its 'Research/European Public Service Union' list and re-submit it under a new designation on condition that the electoral office guaranteed that both lists would be definitively accepted.

14 On 8 November 1994 the president of the electoral office addressed a note to the political secretary of the European Public Service Union informing him that the office had not accepted the union's conditions for altering the designation of one of its lists and had therefore rejected the 'Research/European Public Service Union' list.

15 On 8 November 1994 the applicant appeared before the electoral office to request that the 'Research/European Public Service Union' list be accepted under a different designation with no reference to that union, but the president of the electoral office denied the request.

16 It is against that group of decisions that the applicant, the head of the 'Research/European Public Service Union' list, having made a complaint to the Commission, has brought the main action.

Law

17 Under the combined provisions of Articles 185 and 186 of the EC Treaty and Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court of First Instance may, if it considers that circumstances so require, order that application of a contested act be suspended or prescribe the necessary interim measures.

18 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications for interim measures under Articles 185 and 186 of the Treaty must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. Such measures

must be provisional in the sense that they do not prejudge the decision on the substance of the case (see, most recently, the Order of the President of the Court of First Instance in Case T-88/94 R *Société Commerciale des Potasses et de l'Azote and Entreprise Minière Chimique* v *Commission* [1994] ECR II-263).

Arguments of the parties

19 In order to establish that the main action is well founded, the applicant relies on five pleas in law. He argues, first, that the contested decisions were taken in breach of Articles 7 and 18 of the electoral rules, which, in his submission, confer on the electoral office only the power to check the nominations submitted and reject those which fail to satisfy the conditions laid down by the rules and the power to decide on disputes arising while the election is in progress. Once the nominations are accepted, the electoral office has no power to vary its own decisions.

20 Secondly, the applicant argues that there is no rule under the Staff Regulations to prohibit a union from submitting several lists at the same election. The opinion of the Commission's Legal Service, on the basis of which the electoral office took its decisions, does not show how the fact of multiplying the lists, and thus allowing a single union to submit more than 27 pairs of candidates, conflicts with the spirit of the electoral system. The applicant concedes that such multiplication may affect the distribution of seats, but considers that that is an effect which is inherent in the logic of the system. Moreover, it is undisputed that officials and other servants who are not members of a union may submit as many lists as they wish, which would also be likely to alter the distribution of seats, without the logic of the system being affected.

21 Thirdly, the applicant argues that there has been an infringement of the principle of freedom and democracy, inasmuch as prohibiting unions from submitting two lists restricts the freedom of officials to designate their representatives and discriminates in favour of non-unionized officials, who may submit several lists.

22 Fourthly, the applicant argues that the contested decisions were taken in breach of the principle that opportunity must be given for staff opinion to be expressed. Multiplication of candidates complied with that requirement by allowing all opinions existing amongst the staff to be expressed. Moreover, the submission of the 'Research/European Public Service Union' list was justified by the existence within the Commission of a scientific and technical service with specific problems and needs. In the applicant's submission, it follows as a general principle from the fourth paragraph of Article 1 of Annex II to the Staff Regulations, and from the rules adopted by the Commission on 27 April 1988 laying down the composition and operation of the Staff Committee, that all interest categories amongst the staff must be represented on the committee. The submission of a list composed of officials of the scientific and technical service was a way of putting that principle into practice.

23 Fifthly, the applicant argues that there has been an infringement of trade union freedom and of the principle that all officials should be able to stand for election, inasmuch as restricting each union to one list obliges those of its members who are potential candidates for election to choose, after the 27th pair of candidates has been reached, between leaving that union in order to stand on an independent list and abandoning their candidature. The third contested decision, refusing to allow the 'Research/European Public Service Union' list to be submitted under another designation, was taken in breach both of the principle that all officials should be able to stand for election and of the principle of the protection of legitimate expectations, given that the change of designation followed the previous decisions of the electoral office objecting to the fact that the two lists used the name 'European Public Service Union'.

24 As for proof of the urgency of the measures applied for and the existence of serious and irreparable damage, the applicant points out that the elections are due on 22, 23 and 24 November 1994 and that the contested decisions prevent him and the other candidates on the same list from being elected. Moreover, if the Court of First Instance did not order interim measures, the elections might be annulled at the conclusion of the main proceedings, which could cause serious disruption within the Commission. By contrast, granting the measures would cause the Commission no damage, since the outgoing Staff Committee would remain in place until new elections.

25 For its part, the Commission argues, in response to the applicant's first plea, that the electoral office has a duty, under Article 18 of the electoral rules, to ensure that the electoral procedure is carried out in a lawful manner. Having received two complaints from candidates whose names appeared on other lists, the office had the power to withdraw the measure accepting the two 'European Public Service Union' lists, given that that measure was illegal.

26 As for the second plea, the Commission points out that the applicant is the first to admit that the submission of additional lists is likely to affect the distribution of seats. In the Commission's view, that effect would not, in the present case, be the result of the way in which the electoral system functions, as the applicant alleges, but the result of a multiplication of lists by political groupings. Such multiplication would breach the restriction, laid down by the electoral rules, to 27 candidates and 27 alternates for each list or group standing in the elections, a restriction justified by the need to ensure equal opportunity for candidates.

27 In response to the applicant's third plea, the Commission states that the restriction on the number of lists submitted by each union does not in any way restrict the freedom of officials to designate their representatives.

28 As for the fourth plea, the Commission states that the provisions in force give all categories and services of officials a guarantee of correct representation in elections to the Staff Committee. Moreover, the Commission points out that less than half the candidates on the 'Research/European Public Service Union' list are members of the scientific and technical service.

29 In response to the applicant's fifth plea, the Commission denies that the restriction on the number of lists affects trade union freedom or the principle that all officials may stand for election. The refusal by the president of the electoral office to accept the list under another designation was justified by the need to oppose a disguised attempt to breach the prohibition on multiplication of lists. That decision did not affect any legitimate expectation, inasmuch as the applicant could not rely on precise assurances given by the administration. The Commission submits that, in any event, there cannot be a breach of the principle of the protection of legitimate expectations in the context of an illegal situation such as that.

30 Lastly, the Commission denies the existence of serious and irreparable damage to the applicant and argues that granting the measures applied for would harm the interests of staff, inasmuch as the present Staff Committee would remain in office until the conclusion of the main proceedings, with powers limited to the expedition of current matters.

Findings of the President of the Court of First Instance

31 It is settled case-law that the judge hearing an application for interim measures must assess the urgency of adopting the measures applied for by examining whether implementation of the contested acts before a decision is made on the substance is capable of causing the party making the application irreversible damage which could not be remedied, even if the contested decision were annulled by the Court. In any event, the measures applied for must not, despite their temporary nature, be disproportionate to the defendant's interest in having those acts implemented, even where they form the subject-matter of an action (see the Order of the President of the Court of First Instance in Case T-589/93 R *Ryan-Sheridan* v *EFILWC* [1994] ECR-SC II-257).

32 In that respect, bearing in mind that the elections to the Brussels local section of the Staff Committee are due to take place on 22, 23 and 24 November, there is no denying the urgency of the measures applied for.

33 Having regard to the facts at the President's disposal, and without there being any need to rule on the prima facie foundation of the applicant's arguments to justify the submission of several lists by a single union, it cannot be denied that some of the contested decisions have had the practical effect of preventing the applicant from standing in the elections on a list whose designation was not that of a union.

34 When questioned on that point at the hearing of 18 November, the parties agreed that it was possible, under the electoral rules, for officials and other servants to put forward lists in Staff Committee elections outside the context of the unions.

35 On the face of it, therefore, the contested decisions may constitute an infringement of the right to stand in elections to the Staff Committee, which is a right granted to all officials by the first paragraph of Article 1 of Annex II to the Staff Regulations and to other servants who fulfil certain conditions by Article 7 of the Conditions of Employment of Other Servants of the European Communities. The nature of that right is such that infringement of it is capable of causing serious and irreparable damage to those who hold the right. Such damage must therefore be prevented, whilst ensuring that officials wishing to participate in the elections are allowed equal opportunities.

36 In these circumstances, and taking account of the nature of the procedure in question, mere suspension would not be capable of giving the parties the appropriate remedies. If, as the applicant requests, the judge hearing the application for interim measures were merely to order suspension of the electoral procedure in progress, the present committee would remain in office until the end of the main proceedings, thereby depriving officials and other servants, for the whole duration of those proceedings, of the opportunity to vote on the renewal of the Staff Committee, whose mandate would have expired in the meantime. Moreover, since the parties do not agree on the nature of the committee's powers in that event, such suspension would constitute a source of difficulty as regards the functioning of the bodies representing staff. Balancing the interests at stake in this case, therefore, indicates that suspension of the electoral procedure should be ordered, with postponement of the elections, and that it should be made possible to submit new nominations, from which possibility the applicant himself may benefit.

37 When questioned at the hearing of 18 November 1994 on the practical consequences which would follow from such measures, the parties agreed on the necessity, in a case such as the present, of suspending the electoral procedure and reopening the period for submitting nominations for the Staff Committee elections in accordance with a method to be defined by the President.

38 Having regard to the above, the method for reopening the electoral procedure, taking account of the electoral rules in force, must be defined as follows. In accordance with Article 7 of the electoral rules, lists already accepted by the electoral office cannot be withdrawn by candidates. A new period of six working days shall be indicated by the electoral office to enable new lists of candidates to be submitted. Their designations must not be capable of being confused with those of lists already accepted by the electoral office or those of the unions which have submitted them. The electoral office shall, if need be, exercise in relation to the new lists the powers conferred upon it by the electoral rules and, in particular, by Article 7 thereof. It shall fix a new date for the elections, which shall be the closest possible to the expiry date of the period for submitting new lists of candidates.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The procedure for the elections to the Brussels local section of the Staff Committee of the Commission is suspended.

2. In accordance with Article 7 of the electoral rules, lists already accepted by the electoral office cannot be withdrawn by candidates.

3. A new period of six working days shall be indicated by the electoral office without delay to enable new lists of candidates to be submitted. Their designations must not be capable of being confused with those of the lists already accepted by the electoral office or those of the trade unions or staff associations of European officials who have submitted them.

4. The applicant may rely on the provisions of paragraph 3 under the same conditions as any other candidate.

5. The electoral office shall, if need be, exercise in relation to the new lists the powers conferred upon it by the electoral rules and, in particular, by Article 7 thereof.

6. The elections shall take place on a date to be fixed by the electoral office, which shall be the closest possible to the expiry date of the period referred to in paragraph 3.

7. In other respects all the provisions of the electoral rules shall continue to apply.

8. Costs are reserved.

Luxembourg, 21 November 1994.

H. Jung

Registrar

J. L. Cruz Vilaça

President