Case 76/88 R

Éveline La Terza

v

Court of Justice of the European Communities

(Application for interim measures — Officials — Interim measures — Part-time work)

Order of the President of the Second Chamber of the Court, 23 March 1988 1741

Summary of the Order

Application for interim measures — Suspension of operation of a decision — Conditions for granting — Serious and irreparable damage — Prima facie *case*
(EEC Treaty, Arts 185 and 186; Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT
OF THE SECOND CHAMBER OF THE COURT
23 March 1988 *

In Case 76/88 R

Éveline La Terza, an official of the Court of Justice, represented by Victor Biel and Aloyse May, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 31 Grand-Rue,

applicant,

* Language of the Case: French.

Court of Justice of the European Communities, represented by Francis Hubeau, Head of the Personnel Division, acting as Agent, with an address for service in Luxembourg at his office, Weimershof,

defendant,

APPLICATION for interim measures following the rejection of an application to work part-time,

THE PRESIDENT OF THE SECOND CHAMBER,

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

makes the following

Order

1 The applicant, Éveline La Terza, was engaged as a member of the auxiliary staff of the Court of Justice on 15 June 1973 and established as an official in Grade C 3 on 1 May 1974. On 1 January 1978 she was promoted to Grade C 2 and on 1 July 1984 to Grade C 1. She is assigned to the Library, Research and Documentation Directorate.

2 The applicant's husband, an official of the Commission of the European Communities in Luxembourg, has recently been assigned to the post of chauffeur. His working hours are irregular and he is sometimes away from home for several days in succession. The applicant has two children, of 12 and 9 years of age respectively.

3 On 24 October 1984 the applicant submitted an application for authorization to work half-time with effect from 1 January 1985 on the ground that her presence at home was indispensable in order for her to look after and bring up her children,

who at that time were 9 and 6 years of age, respectively. On 15 November 1984 the administration of the Court rejected her application on the grounds that the relevant heads of department considered that in view of the requirements of the service it was not possible to grant the request and that the question might be reconsidered if it were possible to transfer the applicant to another department. Nevertheless, the administration of the Court reconsidered its decision rejecting her application and granted her authorization to work half-time with effect from 1 April 1985.

4 That authorization was extended twice, on the last occasion until 31 December 1987. When extending the authorization to cover 1986 the administration of the Court stated that 'further extensions of the authorization to work half-time cannot be regarded as assured'.

5 On 8 October 1987 the applicant applied for her authorization to work half-time to be extended to cover the period 1 January to 31 December 1988. By decision of 13 November 1987, the Personnel Division refused her application, observing that Article 55a of the Staff Regulations of Officials provided that the half-time work must be fully in the interests of the institution and that as her immediate superiors 'consider that to extend the authorization would be likely to disturb the functioning of the service, the appointing authority has taken the view that the documents before it contain no data on the basis of which an extension might be granted'.

6 On 28 January 1988 the applicant lodged a complaint against that decision under Article 90 (2) of the Staff Regulations on the grounds that her wish to work half-time was based on the desire to safeguard her children's future, that authorization to work half-time would not disturb the functioning of the service and that insufficient reasons had been given for the rejection of her application.

7 On 9 March 1988 the applicant brought an action against the Personnel Division's decision of 13 November 1987.

8 By an application for interim measures lodged at the Court Registry on the same date the applicant claimed that the Court should:

'(a) Declare that the rejection of (her) application must be suspended temporarily;

(b) Order that the previous authorization to work half-time should continue to govern relations between the parties until such time as the Court has ruled on the merits of the case;

(c) Reserve the costs'.

9 The defendant submitted written observations on 21 March 1988. Since the parties' written submissions contain all the information needed to rule on the application for interim measures, it did not appear necessary to hear oral argument from the parties.

10 In support of her application for interim measures the applicant refers to her social and family situation and observes that any delay in making a decision one way or the other would be liable to have irreparable consequences both for herself and for her two children.

11 The defendant claims that the Court should dismiss the application for interim measures on the grounds that there are no circumstances giving rise to urgency and that the requirements for the adoption of interim measures are not satisfied.

12 As far as urgency is concerned, the defendant observes that the fact that the applicant waited almost two-and-a-half months before bringing her application shows that no urgency can be involved.

13 As regards the requirement that there must be grounds establishing a prima facie case for suspending the operation of the contested decision, the defendant contends that the provisions of Article 55a and Annex IVa to the Staff Regulations confer a wide discretion on the appointing authority. When adopting its decision the appointing authority must take account of the exceptional nature of authorization to work half-time, the reasons given by the official and the interests of the institution. In that connection, account must be taken of the fact that the applicant

is classified in the highest grade of Category C and that she should undertake certain duties of coordination and supervision. In addition, the applicant knew that her immediate superiors considered that her working half-time had caused difficulties in the organization of the service and that it was not fully in the interests of the institution.

14 It should be borne in mind that according to Article 185 of the EEC Treaty actions brought before the Court of Justice do not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended. In addition, Article 186 of the EEC Treaty provides that the Court may in cases before it prescribe any necessary interim measures.

15 Under Article 83 (2) of the Rules of Procedure, in order for interim measures to be adopted, there must be circumstances giving rise to urgency and the grounds establishing a prima facie case for such measures.

16 The Court has consistently held that the urgency of an application for interim measures, as referred to in Article 83 (2) of the Rules of Procedure, must be assessed on the basis of whether it is necessary to adopt such measures in order to prevent serious and irreparable damage to the party seeking them.

17 The question whether or not the applicants' submissions are well founded must be considered in the light of the foregoing provisions and the decisions of the Court relating to them.

18 As regards the existence of circumstances giving rise to urgency, it must be pointed out that the applicant has already worked half-time since 1 April 1985 with the appointing authority's authorization, which was given on the basis of the needs relating to her looking after and bringing up her young children. Even though the children are now 9 and 12 years of age those needs are still substantially the same, in particular having regard to the assignment of the applicant's husband to the post of chauffeur, which necessitates his sometimes being absent from home for several days in succession. In those circumstances, the possibility that the operation of the decision refusing to extend the applicant's authorization to work half-time might cause her and her children serious and irreparable damage cannot be ruled out.

19 Moreover, the appointing authority has not shown the existence of new circumstances necessitating the immediate termination of half-time working on the part of the applicant. The applicant was already classified in the highest grade of Category C when the initial authorization was granted and her immediate superiors had already expressed their opposition to the grant of such authorization at that time.

20 In those circumstances, it must be held that the existence of circumstances giving rise to urgency has been established.

21 As regards the existence of grounds establishing a prima facie case for the interim measures applied for, it is true that the relevant provisions of the Staff Regulations confer a wide discretion on the appointing authority as regards the assessment of what is 'fully in the interests of the institution' and that it is not for the Court to subject the exercise of that discretion to review except in the case of manifest error or misuse of powers. However, the reasons given for the refusal in the contested decision appear so scant and stereotyped as to justify in themselves the applicant's wish to have them subjected to judicial review by the Court.

22 As the two requirements are therefore satisfied it is necessary to suspend the contested decision and to declare that the applicant is authorized to work part-time until 31 December 1988 or, if appropriate, until such time as the Court has given judgment on the merits of the case, whichever is the earlier.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER,

by way of interim decision under Articles 9 (4) and 96 of the Rules of Procedure,

hereby orders as follows:

(1) The decision of 13 November 1987 of the administration of the Court refusing to extend until 31 December 1988 the authorization given to Mrs La Terza to

work half-time is suspended and the authorization is extended to that date unless judgment is given in this case before that date.

(2) The costs are reserved.

Luxembourg, 23 March 1988.

J.-G. Giraud
Registrar

O. Due
President of the Second Chamber