ORDER OF THE PRESIDENT OF THE COURT
3 April 1992 *

In Case C-35/92 P-R,

European Parliament, represented by Jorge Campinos, Jurisconsult, assisted by D. Petersheim, a member of its Legal Service, acting as Agents, with an address for service in Luxembourg at its General Secretariat, Kirchberg,

appellant,

APPLICATION to suspend the application of the judgment of the Court of First Instance of the European Communities delivered on 11 December 1991 in Case T-169/89 *Erik Dan Frederiksen* v *European Parliament*,

the other party to the proceedings being:

Erik Dan Frederiksen, an official of the European Parliament, represented by G. Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 Avenue Guillaume,

THE PRESIDENT OF THE COURT,

prevented from attending, having instructed the President of the First and Fifth Chambers to hear the present application for interim measures,

* Language of the case: French.

THE PRESIDENT OF THE FIRST AND FIFTH CHAMBERS,

pursuant to Article 11 and the second paragraph of Article 85 of the Rules of Procedure,

makes the following

Order

1 By application lodged at the Court Registry on 12 February 1992, the European Parliament, pursuant to Article 49 of the Statute of the Court of Justice of the EEC and the corresponding provisions of the ECSC and EAEC Statutes, brought an appeal against the judgment delivered on 11 December 1991 by which the Court of First Instance annulled the decision of the European Parliament of 3 July 1989 promoting Mrs X to the post of Language Adviser in the Danish Translation Division (Directorate-General for Translation and General Services) following publication of Vacancy Notice No 5809 (PE 128908).

2 In addition, by a separate document lodged at the Court Registry on the same day, the Parliament, pursuant to Article 53 of the EEC Statute and to the corresponding provisions of the ECSC and EAEC Statutes and to Articles 83 and 118 of the Rules of Procedure, made an application for interim relief in the form of suspension of the application of the contested judgment.

3 The applicant before the Court of First Instance lodged written observations on the application for interim relief on 19 March 1992 and the parties submitted oral observations on 26 March 1992.

4 It is necessary to summarize briefly *in limine* the circumstances, as they appear in the contested judgment, which led the Court of First Instance to annul the aforementioned decision of the Parliament.

5 On 9 January 1989 the Parliament published Vacancy Notice No 5809 for a post of Language Adviser in Grade LA 3 in the Danish Translation Division. The qualifications and knowledge required in that vacancy notice included 'knowledge of data-processing methods in management applications'.

6 Following that publication three members of the Danish Translation Division, Erik Dan Frederiksen, Mr Y and Mrs X, submitted applications.

7 By memorandum of 2 February 1989, addressed to the Director-General of Directorate-General VII Translation and General Services (hereinafter referred to as 'DG VII'), the Director of Translation and Terminology proposed that Mr Frederiksen be appointed to the post of Language Adviser. He gave as grounds, *inter alia*, Mr Frederiksen's experience in the field of data processing. By memorandum of 10 March 1989 the Director-General of DG VII submitted a proposal to the Director-General of Administration, Personnel and Finance that Mrs X be promoted to the post in question 'even though that candidate finds it necessary, for the time being, to work half-time for family reasons'. That proposal gave rise to various protests, including protests from the Director of Translation and Terminology and from the Head of the Danish Translation Division, on the ground in particular that Mrs X did not have knowledge of data-processing methods in management applications. In a memorandum sent on 7 June 1989 to the Secretary-General for the Parliament the Director-General of DG VII nevertheless maintained her original proposal.

8 On 3 July 1989 the President of the Parliament, in his capacity as appointing authority, promoted Mrs X to the post of Language Adviser in Grade LA 3 with effect from 1 June 1989.

9 On 12 July 1989, Mr Frederiksen lodged a complaint against the decision appointing Mrs X.

10 By letter of 29 November 1989 the President of the Parliament informed Mr Frederiksen that his complaint had been dismissed.

11 Following her appointment, Mrs X applied for and obtained, on 4 December 1989, permission to continue working half-time until 30 September 1990.

12 By application lodged at the Registry of the Court of First Instance on 27 December 1989, Mr Frederiksen brought an action for the annulment of the decision by which Mrs X had been promoted.

13 In its judgment, the Court of First Instance, after rejecting an objection of inadmissibility raised by the Parliament, states that the vacancy notice constitutes a legal framework which the appointing authority imposes on itself. It therefore considers that it is incumbent on it to establish whether the successful applicant's qualifications were 'objectively in conformity' with the requirements of the notice. In that respect the Court of First Instance points out first of all that the requirement of knowledge of data-processing methods in management applications reflected a need to use new technology in order to meet the problems of the Translation Directorate. It then observes, on the basis of an expert's report which it commissioned, that Mrs X did not have the data-processing knowledge required in the vacancy notice, as they should be objectively interpreted. It concludes that, in considering that Mrs X fulfilled those conditions, the appointing authority exceeded the bounds which it had itself imposed on the exercise of its choice.

14 The Court of First Instance then proceeds to review the manner in which the appointing authority considered the comparative merits of the applicants, as required by Article 45 of the Staff Regulations. In that respect the Court of First Instance finds that the only comparative assessment which was brought to the

attention of the appointing authority for the purpose of clarifying the decision to be adopted was that contained in the memorandum of 10 March 1989 from the Director-General of DG VII. In the opinion of the Court of First Instance that memorandum was incomplete and vitiated by manifest errors of fact and law. First, it did not mention either the knowledge or experience of the three candidates in the data-processing field. It also contained an error in the comparison of the staff reports, since Mrs X and Mr Frederiksen, contrary to what is stated in the said memorandum, were equal as regards the number of assessments of 'excellent'.

15 The Court of First Instance accordingly considers that, in adopting the contested decision, the appointing authority exceeded the legal limits which it had imposed on itself by means of the vacancy notice and also that its assessment was vitiated by a manifest error both as regards verification of the qualifications which were required by the notice and as regards comparison of the candidates' respective merits.

16 The Court of First Instance therefore decided to uphold the pleas in law put forward by Mr Frederiksen and to annul the decision of the President of the Parliament promoting Mrs X to the post of Danish-Language Adviser.

17 As regards the present application to suspend the application of the judgment, it should be pointed out that according to Article 53 of the EEC Statute and the corresponding provisions of the ECSC and EAEC Statutes an appeal against the judgment of the Court of First Instance does not have suspensory effect. However, pursuant to Articles 185 and 186 of the EEC Treaty and the corresponding provisions of the ECSC and EAEC Treaties, the Court may, if it considers that circumstances so require, order that application of the contested judgment be suspended.

18 Under Article 83(2) of the Rules of Procedure a decision ordering suspension, pursuant to the aforementioned provisions, is subject to the existence of circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the grant of suspension. The Court has consistently held that urgency must be assessed in relation to the necessity for an order granting interim relief in order to prevent serious and irreparable damage to the party requesting the interim protection.

19 As regards the condition relating to urgency, the Parliament contends that immediate application of the judgment of the Court of First Instance would deprive the Danish Translation Division of its Language Adviser. At the hearing it added that, in view of the Parliament's current workload, it had to fill the post in question as quickly as possible. Furthermore, it pointed out that publication of a fresh vacancy notice or the appointment of an official on an interim basis might lead to fresh actions being brought both by Mr Frederiksen and by Mrs X for so long as the Court had not given judgment on the appeal.

20 In that respect, as Mr Frederiksen points out, the Parliament kept the post in question vacant from 1 January 1989, when the previous Language Adviser left, to 3 July 1989, when Mrs X was appointed. Furthermore Mrs X was permitted to occupy the post half-time until 30 September 1990. In those circumstances, it ill becomes the Parliament to maintain that the vacancy in the post of Adviser in the Danish Translation for the duration of the proceedings before the Court is likely to cause it serious damage.

21 As regards the workload which is alleged to be heavier at present, it is to be observed that the Parliament has confined itself to general assertions, and has not adduced any objective evidence enabling a comparison to be made, with full knowledge of the facts, between the present situation and the one which existed when the post was not filled or was occupied half-time.

22 In any event, Article 7(2) of the Staff Regulations enables the Parliament to fill the post in question temporarily for a period not exceeding one year. That possibility makes it unnecessary to leave that post vacant during the appeal proceedings.

23 In those circumstances, it must be held that the condition with respect to urgency imposed by Article 83(2) of the Rules of Procedure has not been satisfied. There is accordingly no need to consider whether the pleas of fact and law put forward by the Parliament may justify *prima facie* the grant of the suspension requested.

24 It follows that the application for interim measures must be dismissed.

25 Mr Frederiksen, in turn, made a request in his written observations that the Parliament be ordered to pay a symbolic Belgian franc by way of compensation for non-material damage which he claims to have suffered by reason of the slight on his honour and dignity and from the fact that his knowledge and ability were not recognized.

26 So far as that request is concerned, it is sufficient to point out that it does not fall within the jurisdiction of the President sitting to hear an application for interim relief.

On those grounds,

THE PRESIDENT OF THE FIRST AND FIFTH CHAMBERS,

replacing the President of the Court of Justice pursuant to Article 11 and the second paragraph of Article 85 of the Rules of Procedure,
by interlocutory order,

hereby:

1. Dismisses the application for interim measures;

2. Reserves the costs.

Luxembourg, 3 April 1992.

J.-G. Giraud
Registrar

R. Joliet
(President of the First and Fifth Chambers)
acting as President