ORDER OF THE PRESIDENT OF THE FIRST CHAMBER
OF THE COURT
26 MAY 1982 [1]

William Copine
v Commission of the European Communities

Case 142/82 R

Application for the adoption of interim measures — Suspension of the proceedings of a selection board for a competition intended to constitute a reserve list — Conditions for granting

(EEC Treaty, Art. 186; Rules of Procedure, Art. 83 (2))

In Case 142/82 R

WILLIAM COPINE, an official of the Commission of the European Communities, represented by Victor Biel of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18 A Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Hendrik Van Lier, a member of its Legal Department, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

1 — Language of the Case: French

ORDER

Facts and Issues

I — Background to the dispute

On 6 May 1982 William Copine, an official of the Commission of the European Communities in Grade B 4, brought an action for the annulment of the refusal by the Selection Board for Open Competition No COM/A/325 — General Administration option — to admit him to that competition which was organized by the Commission of the European Communities in order to constitute a reserve of administrators in the career bracket covering Grades 7 and 6 of Category A (see Notice of Open Competition, Official Journal 1981, C 270, p. 22).

Subparagraph III B 2 (b) of the Notice of Open Competition included among the special conditions for admission the following condition:

"At least two years' experience since graduation of the following types:

Professional activity related to the option specified under I;

Post-graduate studies with a degree or diploma related to the option selected;

Further training relating to the option selected."

The Selection Board decided that the applicant's experience was not in accordance with the requirements of the Notice of Competition and Mr Copine claims that that decision contains an inadequate statement of the reasons on which it is based and further constitutes an abuse of power and also a breach of the principle of the protection of legitimate expectation.

On the same day as he brought the action, Mr Copine also applied for the adoption of an interim order under Article 83 et seq. of the Rules of Procedure of the Court of Justice suspending the proceedings of the Selection Board in relation to Open Competition No COM/A/325, General Administration, until further notice, pending a decision on the substance of the main action.

In its observations of 17 May 1982, the defendant Commission contended that the application for the adoption of an interim measure should be dismissed and relied upon the absence of a strong presumption that the application in the main action was well founded (*fumus boni juris*), the fact that the applicant would not suffer any irreparable damage as a result of the refusal to admit him to the competition and the priority of the interests of the proper functioning of the service over the applicant's interests. In relation to the latter point, the Commission stressed that the suspension of the proceedings for the competition would result in serious inconvenience to the 439 candidates admitted to the tests and would also be contrary to the interests of the service, in so far as it would result in a delay of almost a year in filling some 80 posts in Category A.

Decision

1 According to Article 83 (2) of the Rules of Procedure of the Court, an order suspending operation of a decision or providing for other interim measures is to be subject to the existence of circumstances giving rise to urgency and grounds establishing a *prima facie* case for the grant of such measures.

2 According to the well-established case-law of the Court, measures of that kind may be ordered in interlocutory proceedings if their grant is *prima facie* justified on factual and legal grounds and if they are urgent, as being necessary to avoid serious and irreparable damage to the interests of the person concerned.

3 It is necessary to examine whether those conditions are met in this case.

4 In relation to the *"fumus boni juris"*, it cannot be considered that the application meets that condition. Indeed it appears from the file:

(a) that between December 1978 (when Mr Copine obtained a degree in commercial science) and 30 September 1980, the applicant carried out the following tasks in the Technical-Administrative Section of the Specialized Department for Administrative and Technical Services:

"Administrative and financial management of printing contracts entered into with outside undertakings for the publishing of material from all the institutions. Particular duties:

Keeping up to date index of:

National wages, and

Prices of materials (paper);

Updating of contract prices;

Drafting of reports to the Purchases and Contracts Advisory Committee;

Entering its commitments of expenditure";

(b) that between 30 September 1980 and 30 November 1981 (the closing date for the submission of applications to Open Competition No COM/A/325), the applicant was entrusted in the New Developments Section of the Specialized Department for Administrative and Technical Services with carrying out "certain studies on the establishment of computerized systems for the production of publications".

At first sight, even on the assumption that the tasks described under (b) are covered by the concept of "administrative, advisory and supervisory duties" to which according to the Notice of Competition the candidate's experience should relate, the fact remains that it appears that those duties were performed over a period of 14 months, whereas two years' further experience was required.

5 In relation to the urgency of the measure requested by the applicant, it is necessary to consider, on the one hand, the fact that the disadvantages for the proper functioning of the Commission's departments which might result from the suspension of an open competition at present involving 439 candidates and intended to constitute a reserve of administrators in order to fill some 80 posts are much more serious than the consequences which might result for the applicant from the refusal to suspend that procedure, and, on the other hand, the fact that in any event there is no danger of the applicant's suffering serious and irreparable damage. Open Competition No COM/A/325 is in fact intended to constitute a reserve list of administrators, the validity of which is to expire on 31 December 1983 and may be extended. If the main application were to be accepted, the applicant might be admitted to the tests after a fresh examination of his application and if he passed those tests, he might be included on the reserve list before the end of that period, so that his rights would be protected.

6 In view of the foregoing considerations, it might be concluded that the conditions to which the requested measure is subject are not fulfilled and that the application must therefore be dismissed.

Costs

7 In view of the foregoing considerations, the costs must be reserved.

On those grounds,

THE PRESIDENT OF THE FIRST CHAMBER,

by way of interim decision,

hereby orders as follows:

1. **The application is dismissed.**

2. **The costs are reserved.**

Luxembourg, 26 May 1982.

J. A. Pompe
Deputy Registrar

G. Bosco
President of the First Chamber