JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

16 January 1996 *

In Case T-108/94,

Elena Candiotte, self-employed artist, residing in Jambes (Belgium), represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 Rue Glesener,

applicant,

v

Council of the European Union, represented by Yves Crétien, Legal Adviser, and Diego Canga Fano, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: French.

APPLICATION for:

(i) annulment of

— firstly, the decision of the Selection Committee for Artists' Competition No 93/S 21-3373/FR, taken on behalf of the Council and notified to the applicant by letter of 14 January 1994, not to admit her to the second stage of that competition,

— secondly, that Committee's decision to delegate to each national working party the initial selection of applications from artists established in its national territory,

— thirdly, its decision to fix the number of artists to be selected at three per Member State, and

— fourthly, its decision to draw up without further examination the list of artists admitted to the second stage of the competition; and

(ii) an order requiring the Council to pay a symbolic ecu as compensation for the damage which the applicant claims to have suffered as a result of the Selection Committee's decisions, in particular the decision rejecting her application,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: R. Schintgen, President, R. García-Valdecasas and J. Azizi, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 9 November 1995,

gives the following

Judgment

Facts of the case

1 By decision of 12 June 1989 the Council set up a Committee with the task of selecting the works of art to be acquired and installed in the new building in Brussels intended for the Council and its departments (Articles 1 and 4(1)). For that purpose the decision required the Committee to 'implement the procedure to be followed for selecting works of art for permanent display' and to 'select the works of art and, accordingly, the artists who are to create them' (Article 4(2)). The Selection Committee was to organize 'on the Council's behalf a competition ... open to all artists from the Member States of the European Community; if the number of entrants is large, the competition could be held in two stages' (Article 5(1)). The

Committee had 15 members, consisting of one from each Member State, one representative of the architects, one of the General Secretariat of the Council and one of the Council's Staff Committee, all designated by the Member States or the principals they represented (Article 2). Decisions of the Committee were to be taken by simple majority voting, 11 members constituting a quorum (Article 6(2)).

2 On the same day the Council, finding that the Member States, the architects of the building, the General Secretariat of the Council and the Council's Staff Committee had each designated their candidates, appointed the 15 members of the Committee.

3 The Selection Committee subsequently adopted detailed rules for carrying out its task, with a two-stage selection procedure. Thus at its meeting of 17 June 1992 it unanimously decided that the national working parties would carry out an initial selection of artists on the basis of their personal folders and would put forward three artists per Member State for the second stage of the competition. The Committee also decided that from the proposals for works of art accepted for the second stage, it would choose at least one artist per Member State.

4 The competition rules adopted by the Selection Committee were approved by the Council on 25 January 1993. According to paragraph 1 of the rules, 'the competition covers all the plastic arts and is open to artists who are nationals of Member States of the European Community and established in one of those States'. Paragraph 1 also stated that 'the Council hopes to commission between 12 and 18 works of art expressing the theme of unity and understanding among people in a contemporary artistic idiom current in the Member States of the European Community'. Paragraph 2 of the rules provided: 'The competition will consist of two stages comprising: at stage one, an invitation for applications, the purpose of which is an initial selection of a limited number of artists on the basis of [their] initial

applications; at stage two, a competition among projects, aimed at selecting the artists to execute the works of art for the building from those short-listed at stage one'.

5 Under paragraph 4(a) of the rules, the Selection Committee consisted of full members and alternate members. Paragraph 4(c) stated: 'The Selection Committee has set up national Working Parties. Each Working Party shall consist of the full and alternate members representing a Member State and of the assessors whom they may co-opt'. The rules list the 15 full members and 15 alternate members of the Committee. According to paragraph 7(c), 'on the basis of the folders submitted, each national Working Party shall draw up in order of preference a list of the artists it is putting forward for the second stage of the competition. The Selection Committee shall choose a maximum of 36 artists for the second stage, on the basis of the lists drawn up by the national Working Parties and invite them to take part in the second stage'.

6 On 30 January 1993 the Council published Notice of Artists' Competition No 93/S 21-3373/FR (OJ 1993 S 21, p. 48), with the aim of eliciting proposals for works of art to be incorporated in the new Council building in Brussels. The notice summarized the essential points of the competition rules, cited in paragraphs 4 and 5 of this judgment, and stated that a copy of the competition rules could be sent to anyone on request.

7 At its meeting on 28 October 1993, the Selection Committee, after noting that approximately 1 500 applications from artists had been submitted, decided that a list of three artists per Member State would be drawn up on the basis of the initial selection by the national working parties; that that list would be submitted by a written procedure to the members of the Committee for them to express their opinion on the initial selection by the end of November; and that for that purpose the folders of the 36 artists selected for the second stage would be available in the offices of the General Secretariat of the Council for examination by all Committee

members. Each member of the Committee representing a Member State then submitted three artists' names on the basis of the work done by the national working parties.

8 In accordance with the Selection Committee's decision of 28 October 1993, a telex was sent to the members of the Committee on 23 November 1993 with the list of the 36 candidates proposed for the second stage. That telex stated that if no observations on that list were received from the majority of Selection Committee members by 7 December 1993, the list would be considered as adopted by written procedure, and noted that the folders of the artists put forward could be consulted at the offices of the Secretariat-General of the Council.

9 Elena Candiotte had entered the competition. By letter of 14 January 1994, the Council informed her that her application had been rejected. The rejection decision read as follows: 'Following its meeting on 28 October 1993, the Committee for Selecting Works of Art for the new Council building short-listed 36 artists for the second round of the competition. We regret to inform you that you were not one of those short-listed.'

10 The definitive selection of artists took place in Brussels on 18 May 1994, thus concluding the competition.

Procedure and forms of order sought

11 Those were the circumstances in which, by application received at the Registry of the Court of First Instance on 16 March 1994, Elena Candiotte brought the present action.

12 By a separate document, received at the Court Registry on the same date, the applicant submitted an application for suspension of the procedure following the Notice of Competition, and more particularly the work of the Selection Committee.

13 By application lodged at the Court Registry on 6 April 1994, Jacqueline Willems, Chairman of the Council Staff Committee, and 21 members of that committee sought leave to intervene in support of the form of order sought by the applicant in the procedure for the adoption of interim measures and in the main proceedings.

14 By order of the President of the Court of First Instance of 2 May 1994 (Case T-108/94 R *Candiotte* v *Council* [1994] ECR II-249), the application for the adoption of interim measures and the application for leave to intervene in the proceedings for interim measures were dismissed.

15 By order of the President of the Fourth Chamber of the Court of First Instance of 10 October 1994 (Case T-108/94 *Candiotte* v *Council* [1994] ECR II-863), the application for leave to intervene in the main proceedings was dismissed.

16 The Judge-Rapporteur was appointed to the Fifth Chamber and the case was accordingly assigned to that Chamber.

17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure and to adopt measures of organization of procedure, pursuant to Article 64 of the Rules of Procedure, by requiring the Council to produce certain documents and inviting the parties to make submissions at the hearing on the question of the admissibility of some of the

applicant's claims. On 25 October 1995 the Council, in accordance with the Court's request, produced the texts of its two decisions of 12 June 1989 and a copy of the telex sent to the members of the Selection Committee on 23 November 1993.

18 The parties presented oral argument and answered questions put to them by the Court at the public hearing on 9 November 1995.

19 The applicant claims that the Court should:

— declare the application admissible and well founded;

— annul:

— the decision of the Selection Committee for Artists' Competition 93/S 21-3373/FR, taken on behalf of the Council and notified to the applicant by letter of 14 January 1994, not to admit her to the second stage of that competition;

— the decision of the Selection Committee to delegate to each national working party the initial selection of applications from artists established in its national territory;

— the Committee's decision to fix the number of artists to be selected initially at three per Member State;

— its decision to draw up without further examination the list of artists admitted to the second stage of the competition;

— order the Council to pay a symbolic ecu as compensation for the damage suffered;

— order the Council to pay the costs, including the costs of the proceedings for the adoption of interim measures.

20 The Council contends that the Court should:

— dismiss the application;

— reject the claim for compensation;

— order the applicant to pay the costs.

The Council further urges the Court, in the event that it finds the application well founded, to order all appropriate measures to protect the clearly defined interests of the successful artists, whose works have been selected and will probably have been completed and even incorporated into the new building by the date of the judgment.

The subject-matter of the dispute

21 The applicant stated at the hearing before the Court that her claim for annulment was aimed at the Selection Committee's decision, notified by letter of 14 January

1994, not to admit her to the second stage of the competition at issue, and that she was not challenging, as autonomous decisions, the other three decisions, namely the Selection Committee's decision to delegate to each national working party the initial selection of applications from artists established in its national territory, its decision to fix at three per Member State the number of artists to be selected initially, and its decision to draw up without further examination the list of artists admitted to the second stage of the competition. The applicant explained that the unlawfulness of those three decisions was relied upon only as an argument in support of her claim for annulment of the decision not to admit her to the second stage of the competition. In those circumstances, the Court finds that the subject-matter of the claim for annulment is limited to the latter decision of the Selection Committee, notified to the applicant by letter of 14 January 1994.

Substance

The claim for annulment

22 The Court finds that, as the applicant conceded at the hearing, the three pleas in law she has raised in support of her application in fact constitute a single plea, namely that the selection procedure was unlawful as a result of a breach of the rules of the competition, and that that plea consists of three limbs. The first limb alleges breach of the competition rules in that the Selection Committee delegated to each national working party the initial selection of the artists established in its national territory, without having access to the folders of candidates established in other Member States; the second limb alleges breach of the competition rules in that the decision of the Selection Committee arbitrarily fixed the number of artists to be selected initially at three per Member State; the third limb alleges breach of the competition rules in that the Selection Committee's decision to eliminate the applicant was taken without 14 of the 15 members of the Committee having examined her application.

First limb: Breach of the rules of the competition in that the Selection Committee delegated to each national working party the initial selection of artists established in its territory

Arguments of the parties

23 The applicant submits that the procedure for the initial selection of artists was unlawful in that the Selection Committee delegated to each national working party, in breach of the rules of the competition, the initial selection of artists established in its territory.

24 The applicant argues that it follows from the Council's decision of 12 June 1989 and from the competition rules that the works of art were to be selected on the basis of collegiate decisions. She considers that the Committee decided to alter the selection procedure laid down by the rules in order to carry out on a definitive basis an initial selection of three candidates per national working party.

25 While the applicant acknowledges that that decision was taken in view of the considerable number of applications, she argues that the 36 successful artists were not selected by the Committee, which was not even able in practice to carry out a comparative examination of the candidates' folders, and that it was the national working parties which initially selected the artists established in their territory, the Committee merely approving the lists drawn up by each working party.

26 The applicant submits that the case-law of the Court of Justice relating to competitions shows that a selection board may indeed delegate tasks or be assisted in its work, provided however that it always retains control of the proceedings by

reserving the power to take the final decision and by itself determining the criteria of assessment (Opinion of Advocate General Warner in Case 90/74 *Deboeck* v *Commission* [1975] ECR 1123 and judgments in Case 122/77 *Claes and Others* v *Commission* [1978] ECR 2085 and Case 40/86 *Kolivas* v *Commission* [1987] ECR 2643). According to the applicant, the Committee abandoned control of the selection process within the national working parties and, moreover, failed to define the criteria for assessing applications, contrary to its obligations and responsibilities. Furthermore, by taking nationality as a criterion, it infringed the principle of equal treatment for candidates entering the first stage.

27 The Council submits that the Selection Committee acted in conformity with the Council's decision of 12 June 1989 and did not exceed the wide powers conferred on it for the organization of the competition in question. With respect in particular to the introduction of a national process for the initial selection of three candidates, which involved the delegation to the national working parties of the task of examining the folders of their nationals, the Council considers that such a measure proved especially appropriate in view of the 1 500 applications received by the Secretariat-General of the Council between 30 January and 30 June 1993.

28 The Council considers that it is not correct to assert that the Committee altered the selection procedure in the course of its work, since the detailed rules for the two stages of the competition, decided by the Committee in June and November 1992, were fully complied with. The Council observes that all the members of the Committee accepted those rules. Moreover, it considers that the choice between 36 works to be submitted in the second stage left the Selection Committee sufficient scope for exercising its discretion or judgment.

29 As to the case-law of the Court of Justice cited by the applicant, the Council considers to begin with that it is doubtful whether cases concerning selection boards for competitions can be applied to a committee for selecting works of art, but that

even if a certain analogy can be established, in the present case the Committee reserved the power to take the final decision in the exercise of the discretion conferred on it in order to draw up itself the list of the 18 successful candidates invited to provide a work of art. Finally, the Council considers that there was no breach of the principle of equal treatment, since the rules of the competition, which applied in the same manner to all the candidates, provided for a single theme for the works of art to be submitted by them.

Findings of the Court

30 The Court notes to begin with that the applicant, citing the decisions in Community staff cases relating to the composition of the selection board in competitions for the recruitment of officials, criticizes the Selection Committee for having failed to exercise effective control over the process of initial selection by the national working parties, in that it restricted itself to approving the lists drawn up by each national working party. The Court considers that those decisions cannot be applied in the present case. The selection of works of art to be placed in an office building and the recruitment of officials differ so much, as regards both subject-matter and purpose, that the Court cannot proceed by analogy and apply to artists' competitions the principles which govern the European civil service.

31 The Court considers that the question which arises in the present case is whether the relevant rules were complied with during the initial selection procedure in the first stage. The applicant does not challenge the extent of the powers conferred on the Selection Committee by the Council within the framework of the procedure at issue, nor even the lawfulness of the rules of the competition. She considers, however, that it follows from all the measures adopted that the Selection Committee alone was competent to select the candidates admitted to the second stage. The Court must therefore examine whether the fact that the initial selection of artists for the second stage was carried out by the national working parties constitutes an infringement of all the measures regulating the course of the competition.

32 Firstly, as the Council rightly submits, the Selection Committee had a wide discretion with respect to the course of the competition, as shown in particular by the Council's decision of 12 June 1989 conferring on it the power to implement the procedure for selecting the works of art, and that discretion implied the possibility of adapting such a procedure to the circumstances. In cases such as this, where decisions have been taken on the basis of a wide discretion, review by the Community judicature must be limited to establishing that there was no manifest error in the assessment of the facts, no manifest breach of the rules governing the adoption of the decisions at issue, and no misuse of powers (see, for example, the judgments of the Court of Justice in Joined Cases 83/76, 94/76, 4/77, 15/77 and 40/77 *HNL and Others* v *Council and Commission* [1978] ECR 1209, paragraph 6, and in Case 188/85 *Fediol* v *Commission* [1988] ECR 4193, paragraph 6, and the judgment of the Court of First Instance in Joined Cases T-17/90, T-28/91 and T-17/92 *Camara Alloisio and Others* v *Commission* [1993] ECR II-841, paragraph 90).

33 Secondly, the rules of the competition provide for the setting up of national working parties and give them the task of drawing up a list in order of preference of the artists to be put forward by each working party for participation in the second stage of the competition. That rule is consistent with the decision adopted by the Committee at its meeting on 17 June 1992, at which the members of the Committee agreed that the national working parties would carry out an initial selection of artists on the basis of their personal folders. Consequently, that delegation to the national working parties of the task of carrying out an initial selection, far from constituting a breach of the rules of the competition, was taken in full compliance both with the rules and with the decisions of the Committee.

34 Thirdly, the national working parties consisted of full and alternate members — who were members of the Selection Committee — and assessors nominated by them, which implies that the members of the national working parties were aware of the principles governing the competition, its subject-matter and its purpose, namely to select works of art expressing 'the theme of unity and understanding among people in a contemporary artistic idiom current in the Member States of the European Community' (see paragraph 1 of the rules, cited in paragraph 4 above).

35 Fourthly, neither the Council's decision of 12 June 1989 nor the rules of the competition imposed on the national working parties the number of artists to be included on the initial selection list. Since the rules stated that the Committee would, on the basis of the lists drawn up by the national working parties, choose a maximum of 36 artists for the second stage, there was nothing to prevent the national working parties from submitting a list of three artists, which would allow the Committee to designate a maximum of 36 artists and would be an especially appropriate measure — as the Council has argued — in view of the large number of applications — 1 500 — received by the Committee.

36 The Court finds, moreover, that once the initial selection had been made by the national working parties, it was the Committee which examined the folders of the artists who had been selected and which decided to approve the list of the 36 artists admitted to the second stage. At its meeting of 28 October 1993 the Selection Committee decided that each working party would definitively submit three candidates on the basis of the initial selection work already accomplished; that that list would be submitted to the Committee members by written procedure, for them to express their opinion on it by the end of November; and that for that purpose the folders of the 36 artists chosen for the second stage would be available at the offices of the General Secretariat of the Council for examination by any member of the Committee who so wished. A telex was then sent to the members of the Selection Committee on 23 November 1993 with the list of the 36 candidates put forward for the second stage, stating that if no observations on the list were received from the majority of the members by 7 December 1993, it would be regarded as having been adopted by written procedure. The Court considers that the members of the Selection Committee were at all times able to consult the artists' folders, express their doubts with respect to any candidate, and if need be challenge the choices made. Since the majority of the members of the Committee did not submit observations on the list of the 36 artists put forward, the list was approved on 7 December 1993.

37 It follows from all the above points that it was the Committee itself which decided to draw up the list of the 36 artists on the basis of the initial selection by the national working parties, and that in so doing the Selection Committee acted in accordance with the competition rules and its own decisions.

38 This limb of the plea must therefore be rejected.

Second limb: Breach of the competition rules in that the Selection Committee fixed the number of artists to be selected initially at three per Member State

Arguments of the parties

39 The applicant submits that the Selection Committee's decision arbitrarily to fix at three per Member State the number of artists to be selected initially was taken in breach of the rules of the competition. She argues that the competition rules did not provide for allocating successful candidacies by nationality and that such a criterion of geographical subdivision is contrary both to the spirit of the competition and to Article 7(c) of the rules itself, which provides that each national working party is, on the basis of the folders submitted, to draw up a list in order of preference of the artists it is putting forward for the second stage of the competition and that the Selection Committee is to choose, on the basis of the lists drawn up by the national working parties, a maximum of 36 artists to take part in the second stage.

40 The Council recalls the wide powers conferred on the Committee for the organization of the competition. Thus the fact that the Committee wished to choose at least one artist from each Member State and took suitable measures for that purpose derives, in the Council's opinion, from considerations of political expediency which were appropriate in the context of the incorporation of works of art in a building intended for meetings of the Council. The Council considers that once it had been decided to give the national working parties the task of drawing up a list of candidates to take part in the second stage of the competition, it made sense for those working parties to be allowed to designate only artists who were nationals of their country and that in a Community of twelve Member States the rule stating that the Selection Committee was to choose a maximum of 36 artists on the basis of the lists drawn up by the national working parties implied that three artists per Member State would be chosen.

Findings of the Court

41 With respect, firstly, to the fixing at three of the number of artists initially selected by each national working party, it must be recalled that the Court held in paragraphs 32 to 38 above that the decision establishing the list of the 36 successful candidates admitted to the second stage of the competition, on the basis of the lists of three candidates put forward by the national working parties, was taken by the Selection Committee in accordance with the rules of the competition. The applicant's complaint on this point therefore cannot be upheld.

42 With respect, secondly, to the subdivision of the successful candidates by nationality, the Committee had a wide discretion as to the course of the competition. Consequently, the Court's review must be limited to establishing whether there was a breach of the rules governing the Committee's work.

43 To begin with, neither the Council's decision of 12 June 1989 nor the rules of the competition provided for a criterion of geographical spread in connection with the initial selection process. In the absence of a provision laying down such a criterion, as of a provision excluding recourse to such a criterion, the Court considers that the wide discretion conferred on the Selection Committee authorized it to adopt detailed rules governing the course of the procedure, both at the initial selection stage and at the selection stage, in the manner it considered most appropriate. It should be noted that it was the Committee itself which decided at the meeting on 17 June 1992 to delegate the initial selection of artists to the national working parties, to fix the number of artists to be put forward for the second stage at three per Member State, and to choose at least one artist per Member State from the authors of the works of art admitted to the second stage.

44 Secondly, it must be borne in mind that the object of the competition (see paragraph 1 of the rules, cited in paragraph 4 above) was to 'commission between 12 and 18 works of art expressing the theme of unity and understanding among people in a contemporary artistic idiom current in the Member States of the European

Community'. That must be read in the light of a concern to reflect the artistic trends prevalent in all the Member States, especially in view of the fact that under Article 8(c) of the rules, relating to the 'judging procedure' for the second stage, the minimum number of artists to be selected at the end of the competition was twelve, in a Community of twelve Member States.

45 Consequently, by fixing the number of artists to be selected for the second stage at three per Member State, the Selection Committee did not infringe either the wording or the purpose of the competition rules, in any way.

46 Accordingly, the second limb of this plea must also be rejected.

Third limb: Breach of the competition rules in that the decision to reject the applicant's candidacy was taken in an unlawful fashion

Arguments of the parties

47 The applicant submits that her application was examined only by the member of the Committee who belonged to the corresponding national working party. She argues that the selection of the 36 artists for the second stage of the competition was not made by the Committee, which was not even able to carry out a comparative examination of the candidates' folders, since they had been sent directly to the national working parties. By so doing, the Committee had not retained control over the work and had been content merely to approve, by a majority, the selection made at national level.

48 The Council observes that the detailed rules governing the course of the competition, in particular the delegation of the initial selection process to the national working parties, were adopted by the Committee unanimously at its meetings in June and November 1992, so that the members representing the Secretariat-General and those representing the Staff Committee were well aware at the time that they would not take part in the initial selection by the national working parties. The Council also submits that the Committee retained control over the process in any event, and that even when it entrusted the national working parties which it had formed with the task of making an initial selection of 36 artists from the 1 500 or so applications, it was for the Committee alone to choose the successful candidates in the competition.

Findings of the Court

49 It must be recalled that the Court held in paragraphs 32 to 38 above that both the decision to delegate the initial selection process to the national working parties and the decision drawing up the list of artists admitted to the second stage of the competition were taken by the Selection Committee, not by the national working parties, and that they were taken in accordance with the competition rules and the decisions of the Selection Committee.

50 Consequently, the fact that the applicant's folder was examined by the corresponding national working party is a consequence of the decision to delegate the initial selection process to the national working parties, and cannot be regarded as constituting a breach of the competition rules. Furthermore, it was the Committee which — having all the artists' folders available to it, including the applicant's — drew up the list of artists to take part in the second stage of the competition, and it was therefore the Committee itself, and not some of its members, which rejected Mrs Candiotte's application.

51 The third limb, and the plea in law as a whole, must accordingly be rejected.

The claim for compensation

Arguments of the parties

52 The applicant submits that as a result of being excluded from the second stage of the competition by an unlawful procedure, she suffered serious damage in view of the interest and publicity given to the competition, in particular on the occasion of the ceremonial opening of the building. The applicant also observes that the assessment by the President of the Court in his order of 2 May 1994, cited above, relates only to the grant of urgent interim measures.

53 The Council submits that any damage suffered by Mrs Candiotte would be purely hypothetical, in that it is not certain that she would have been successful in the competition, and that in any event it would be equivalent to that suffered by the artists who were eliminated after the first stage. The Council also considers that paragraph 28 of the order of the President of the Court of 2 May 1994, cited above, confirms its assessment as to the existence of the alleged damage.

Findings of the Court

54 The Court recalls that it has consistently been held that for applicants to be able to claim compensation for damage, they must show fault on the part of the institution, the fact of certain and quantifiable damage, and a causal link between the

wrongful act and the damage complained of (judgments of the Court of Justice in Case C-308/87 *Grifoni* v *EAEC* [1990] ECR I-1203, paragraph 6, Joined Cases C-258/90 and C-259/90 *Pesquerias de Bermeo and Naviera Laida* v *Commission* [1992] ECR I-2901, paragraph 42, and Case C-146/91 *KYDEP* v *Council and Commission* [1994] I-4199, paragraph 19). In the present case, the Court finds that it follows from the foregoing that the competition procedure was conducted in a proper and lawful manner, and that no fault whatever has been established on the part of the Council.

55 It follows that the claim for compensation for the damage allegedly suffered by the applicant must be rejected.

Costs

56 Under the first subparagraph of Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the Council has applied for costs to be awarded against her, she must be ordered to pay the whole of the costs, including those of the proceedings for the adoption of interim measures.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the whole of the costs, including those relating to the proceedings for the adoption of interim measures.

Schintgen García-Valdecasas Azizi

Delivered in open court in Luxembourg on 16 January 1996.

H. Jung R. Schintgen

Registrar President