ORDER OF THE PRESIDENT OF THE SECOND CHAMBER
OF THE COURT
OF 13 JANUARY 1978 [1]

Enrico Salerno
v Commission of the European Communities

Case 4/78 R

In Case 4/78 R,

ENRICO SALERNO, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Centre Louvigny, 34/B/IV, Rue Philippe II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Raymond Baeyens, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

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

makes the following

ORDER

Facts and issues

On 4 January 1978 the applicant lodged an application for the annulment of the refusal by the Selection Board in Competition COM/A/154 to admit him to that competition, organized by the Commission of the European Communities for the purpose of constituting a reserve of administrators in the career bracket covering Grades 7 and 6 of Category A (cf. Notice of Competition,

1 — Language of the Case: French.

Official Journal No C 213 of 7 September 1977, p. 9).

Since the Selection Board for the competition had given as a reason for its refusal that the applicant's experience had not been considered sufficient in the field to which the competition related, the applicant claims that the Selection Board had violated the principle of equality for the reason that certain other candidates, like him holders of the *Certificat de Hautes Études Européennes* (Certificate of Advanced European Studies) awarded by the Collège d'Europe, were admitted to the competition.

Referring to this application the applicant made on the same day an application for the adoption of interim measures under Article 83 et seq. of the Rules of Procedure to the effect that the tests for Competition COM/A/154 fixed for 16 and 17 January 1978 should be suspended, alternatively that the applicant should be provisionally authorized to take part in the tests.

In a statement dated 10 January 1978 the Commission, the defendant, contended that the application for interim measures be rejected, claiming that there were no circumstances establishing a *prima facie* case for the measures claimed.

To assess the importance of what is involved in the application for interim measures the Commission states that from the 4 279 applicants for the competition in question the Selection Board drew up a list of 1 505 applicants who satisfied the special conditions for admission and who as a result were admitted to the written tests due to take place on 16 and 17 January 1978 in nine towns in the Community, whilst 2 773 other applicants were excluded.

The parties were duly summoned and appeared before the President of the Second Chamber on 13 January 1978 when they submitted their observations.

Decision

1 Under Article 83 (2) of the Rules of Procedure of the Court any suspension of operation is subject to the existence of circumstances giving rise to urgency and of grounds establishing a *prima facie* case for such a measure.

2 As to the nature of the measure applied for, the admission of the applicant to the tests in question would amount not to a suspension of the operation of the contested measure but to a complete reversal, even though only provisional, so that the main action would lose its purpose.

3 Accordingly the Court has no jurisdiction to order, on the basis of a suspension of operation of the contested measure or as an interim measure, the admission of the applicant to the tests as asked for by him in the second part of his conclusions but only to order where appropriate the suspension of the tests fixed for 16 and 17 January 1978 pending a decision on the substance of the case either by the Commission or the Court.

4 The applicant has claimed that the refusal to admit him is *prima facie* unjustified.

5 In this respect the claim of discrimination made by him in his main action has been contested by the Commission which has alleged in this respect that the position of the other applicants referred to by the applicant is not comparable with his in so far as the other applicants opted for 'External Relations' whereas the applicant opted for 'Financial and Budgetary Affairs'.

6 The question will thus arise in the main action whether the Court's task of carrying out a review of legality extends to the discretion exercised by the Selection Board in respect of the relevance of a certificate of post-graduate studies to justify according to the terms of the Notice of Competition COM/A/154 practical experience in relation to one or other of the fields selected by the candidates.

7 It is not possible at this stage of the proceedings to anticipate the Court's decision on this question.

8 As regards the urgency of the measure applied for the applicant alleges that the refusal of the Selection Board will deprive him of any opportunity to make application for posts with the Commission having regard in particular to his age.

9 The Commission however has referred to the letter dated 21 December 1977 sent to the applicant by the Chairman of the Selection Board in which the applicant was advised, having regard to his education and his present practical experience to submit his application for a subsequent competition in the field of 'Economy' and to choose as his option 'International Economic Relations'.

10 Such a competition would probably be organized in 1979/1980, that is to say at a date when the applicant will not yet have reached the age-limit of 32 normally specified for competitions of this kind.

11 Accordingly, however serious the consequences of being barred, perhaps wrongly, from taking part in the tests for the present competition may be for the applicant, the damage which may result is not necessarily completely irreparable.

12 On the other hand, weighed against the applicant's possible interest in having the tests suspended until the decision in the main action, the inconvenience which such a measure would cause the Commission must be taken into account.

13 In this respect there is no doubt, either from the point of view of principle or in the particular circumstances of the case, that an interim order at the last moment suspending the procedure taking place would cause the Commission very serious difficulties in the due conduct of the general competitions for which an extraordinary number of persons have applied.

14 Such a suspension would moreover also involve serious inconvenience to the candidates admitted to the competitions.

15 In all these circumstances it must be concluded that the measure asked for is not justified and that the application must therefore be rejected.

Costs

16 At the present stage costs must be reserved.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER

by way of interlocutory decision, hereby orders as follows:

1. **The application is dismissed;**
2. **Costs are reserved.**

Luxembourg, 13 January 1978.

H.-J. Eversen
Deputy Registrar

M. Sørensen
President of the Second Chamber