Case 78/86 R

Mario Costacurta
v
Commission of the European Communities

(Official — Suspension of operation of a decision)

Summary

Application for the adoption of an interim measure — Suspension of operation of a decision — Interim measures — Conditions on which they are granted
(Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT
OF THE SECOND CHAMBER OF THE COURT
20 March 1986 *

In Case 78/86 R

Mario Costacurta, an official of the Commission of the European Communities, represented and assisted by N. Decker of the Luxembourg Bar, 16 avenue Marie-Thérèse, Luxembourg,

applicant,

* Language of the Case: French.

Commission of the European Communities, represented by its Legal Adviser, D. Gouloussis, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the adoption of an interim measure suspending the operation of the Commission's decision of 12 December 1985 and provisionally admitting the applicant to the training courses organized in connection with Competition No COM/A/8/84 and commencing on 17 March 1986,

THE PRESIDENT OF THE SECOND CHAMBER,

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

makes the following

ORDER

1 By an application received at the Court Registry on 13 March 1986, Mario Costacurta, an official of the Commission in Grade B 1, brought an action seeking primarily the annulment of the decision of the Head of the Recruitment Division of 12 December 1985 and consequently his admission to the training courses organized in connection with Internal Competition No COM/A/8/84 and commencing on 17 March 1986.

2 By an application for the adoption of interim measures lodged on the same day the applicant sought the suspension of operation of that decision and his provisional admission to the aforementioned training courses, pursuant to Article 91 (4) of the Staff Regulations of Officials.

3 Notice of the application for the adoption of interim measure was served on the Commission, which submitted written observations. Since the written submissions contained all the information needed to rule on the application, it was not necessary to hear the parties' oral submissions.

4 The applicant, who has been an official of the Commission since 1 October 1968, applied in July 1984 to take part in Internal Competition No COM/A/8/84, based on qualifications and tests, for the constitution of a reserve of administrators (Career Bracket A 7 — A 6). The applicant was admitted to the tests and was subsequently informed by a letter dated 12 December 1985 from the Head of the Recruitment Division that the Selection Board considered that it was unable to admit him to the next stage of the procedure, namely the training courses. The Selection Board judged each candidate on the basis of overall factors and after comparing their merits admitted those whom it judged to be the best qualified.

5 Taking the view that the reasons on which that decision was based had not been adequately stated and that the decision infringed Article 25 of the Staff Regulations and Articles 1 and 5 of Annex III to those Regulations and that alternatively the Commission was guilty of a misuse of power, the applicant lodged the main application and this application for the adoption of interim measures.

6 Article 83 (2) of the Rules of Procedure requires the applicant to state the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.

7 The applicant refers in this regard to the submissions set out in his main application and emphasizes that the requirement of urgency laid down in the aforementioned provision is satisfied since the Selection Board intends to organize theoretical and practical training courses commencing on 17 March 1986, both of which are compulsory for all the candidates admitted to the competition. At the end of the courses each candidate will have to answer questions on a report previously

submitted by that candidate and relating both to the period of practical training and to the various training courses attended by him. If he is prevented from taking part in those courses, he will, he alleges, be prevented from taking part in the interviews provided for in the competition notice. His exclusion from the training courses would therefore cause him irreparable harm.

8 In its written observations the Commission contends that the application for the adoption of interim measures should be dismissed.

9 The Commission points out in this regard that the applicant would not suffer any irreparable harm if the judgment in the main proceedings were given after the courses of theoretical and practical training had ended. If the Court were to grant the main application and annul the contested decision, the Commission would have to re-open the competition for the applicant and the Selection Board would resume its work in order to give effect to the judgment. The training courses could therefore be organized for a single person. The Commission also points out that a provisional measure which would deprive the principal action of its purpose cannot be granted.

10 In dealing with the question raised by the application for the adoption of interim measures, it must be stated that the Commission's written observations show that the applicant would not suffer any irreparable harm if the judgment on the substance of the case were given after the training courses had ended. The Commission has stated that it is prepared to re-open the competition for the applicant if his main action is successful. In those circumstances, the applicant has not specified the circumstances giving rise to the urgency of his application for the adoption of interim measures.

11 It follows from the foregoing considerations that the application for the adoption of interim measures must be dismissed.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER,

by way of interim decision,

after hearing the Opinion of the Advocate General,

hereby orders as follows:

(1) The application for the adoption of interim measures is dismissed;

(2) The costs are reserved.

Luxembourg, 20 March 1986.

P. Heim
Registrar

K. Bahlmann
President of the Second Chamber