ORDER OF THE PRESIDENT OF THE THIRD CHAMBER OF THE COURT
11 June 1985 *

In Case 146/85 R

Claus Diezler, Richard Deasy, Steen Fink-Jensen, Helmut Mullers and Luigi Ricci, officials of the Economic and Social Committee, represented and assisted by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, of the Luxembourg Bar, Centre Louvigny, 34 B IV Rue Philippe-II,

applicants,

v

Economic and Social Committee, represented by Detlef Bruggemann, a member of its Personnel Directorate, residing in Brussels, assisted by Alex Bonn, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 Côte d'Eich,

defendant,

APPLICATION for the suspension of the elections to the Staff Committee of the Economic and Social Committee due to take place on 14 June 1985,

THE PRESIDENT OF THE THIRD CHAMBER,

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

makes the following

* Language of the Case: French.

ORDER

Facts

The rules governing the composition and procedure of the Staff Committee were laid down by Decision No 1896/75A of the Bureau of the Economic and Social Committee of 28 July 1975.

The first paragraph of Article 5 of that decision states as follows: 'The members of the Staff Committee shall be elected in accordance with the conditions laid down by the general meeting of officials of the Economic and Social Committee, which must be held not later than one month before the expiry of the term of office of the outgoing Committee'.

The electoral system and the conditions governing elections to the Staff Committee were laid down most recently in the Rules for Elections to the Staff Committee (hereinafter referred to as 'the Rules') (Document CP 153/83 of 4 March 1983), which introduced a system of proportional representation known as 'Supar'.

Those Rules were amended at the general staff meeting held on 19 April 1985, which introduced a different electoral system.

The term of office of the outgoing Staff Committee expired the following day, 20 April 1985.

On 22 April 1985, the fourth applicant, Helmut Mullers, acting on behalf of his trade union, requested the President of the Economic and Social Committee to declare that the amendment of the Rules was illegal because the meeting which adopted it was held on the day before the expiry of the outgoing Staff Committee's term of office, contrary to Article 5 of Decision No 1896/75A, whereas it should have been held at least one month before that date. Consequently, the applicant requested the President of the Economic and Social Committee to draw the attention of the President of the Election Board, who was appointed at the same general meeting of 19 April 1985, to the need for the elections to the Staff Committee for 1985 to 1987 to be held in conformity with the Rules of 4 March 1983.

By a letter dated 24 April 1985 the President of the Economic and Social Committee refused to accede to that request on the ground that, although the Economic and Social Committee had the power and the duty to oversee the preparation and conduct the election of the staff representatives, the decision sought by the applicant was *ultra vires* because it might influence the outcome of the elections.

On 17 May 1985 the applicants brought an action before the Court of Justice against the Economic and Social Committee for the annulment of the decision of the President of the Economic and Social Committee of 24 April 1985, the Rules adopted at the general staff meeting held on 19 April 1985 and all subsequent steps taken by way of implementation of those Rules.

By application lodged at the Court Registry on the same date, the applicants sought an order suspending the elections to the Staff Committee of the Economic and Social Committee which were due to take place on 10 June 1985 and were subsequently postponed until 14 June 1985.

In a document lodged at the Court Registry on 29 May 1985, the Economic and Social Committee submitted written observations concerning the application for suspension.

The parties presented oral argument at the sitting on 6 June 1985.

The Court heard the views of the Advocate General, Sir Gordon Slynn.

Decision

1 By application lodged at the Court Registry on 17 May 1985 Claus Diezler and other officials of the Economic and Social Committee brought an action for the annulment of:

(a) the Rules adopted at the general meeting of the staff of the Economic and Social Committee held on 19 April 1985 with regard to the system of election to the Staff Committee,

(b) all subsequent steps taken by way of implementation of those Rules, in particular the elections to the Staff Committee due to take place on 10 June 1985 and all the appointments made by the Staff Committee, and

(c) in so far as is necessary, the decision of 24 April 1985 rejecting the complaint submitted by the fourth applicant.

2 By application lodged at the Court Registry on the same date, the applicants also requested the Court, pursuant to Article 83 *et seq.* of the Rules of Procedure:

(a) to suspend the elections to the Staff Committee of the Economic and Social Committee which were due to take place on 10 June 1985, and

(b) in the alternative, to order those elections to be held in conformity with the Rules adopted at the general staff meeting of 4 March 1983.

Admissibility

3 When considering an application for suspension of the operation of a measure or the adoption of any other interim measures which may be necessary, the judge charged with the task of adjudicating on an application for interim relief cannot prejudge the question whether the main application is admissible or well founded. However, an application for the adoption of interim measures is inadmissible if the

main application is manifestly inadmissible. It is therefore necessary to consider whether the main application is *prima facie* admissible without prejudice to the decision of the Court on the substance of the case.

4 As the Court stated in its judgment of 29 September 1976 in Case 54/75 (*De Dapper* v *European Parliament* [1976] ECR 1381), review by the Court of the legality of elections to the Staff Committee is possible within the framework of applications directed against the institution concerned. Consequently, the main application in this case is *prima facie* admissible so far as it is directed against the Economic and Social Committee which, in this instance, is in the same position as an institution with regard to its staff. That finding also constitutes a sufficient basis for holding that the application for suspension is admissible in that respect without there being any need to consider whether the main application is admissible in so far as it seeks the annulment of the Rules adopted at the general meeting of the staff of the Economic and Social Committee and of the steps taken subsequently.

5 It must be pointed out, however, that the main application would be inadmissible if it had not been preceded, as is required by Article 91 (2) of the Staff Regulations of Officials, by a complaint against an act of the institution concerned lodged under Article 90 (2) of those Regulations. It is therefore necessary to consider whether the application is manifestly inadmissible in that respect.

6 As was confirmed by the Court in its aforementioned judgment, the institutions concerned have the power and the duty to intervene of their own motion when they have doubts as to the legality of elections to the Staff Committee. The Economic and Social Committee was therefore under a duty to review of its own motion the legality of the decision adopted at the general staff meeting held on 19 April 1985. Its failure to undertake that review therefore amounts to a failure to adopt a measure prescribed by that rule for the purposes of Article 90 (2) of the Staff Regulations.

7 The letter written by the fourth applicant, Mr Mullers, to the President of the Economic and Social Committee on 22 April 1985 must be regarded as a complaint against the Economic and Social Committee's failure to review the decision in question. Although the letter referred to the applicant's trade union, it may also be regarded as concerning him personally. Consequently, the conditions governing the admissibility of an application laid down by Article 91 (2) are *prima facie* satisfied by the applicant.

8 It follows that Mr Mullers' application for suspension is admissible and the substance of the case must therefore be examined without there being any need to consider whether the application is admissible in the case of the other applicants.

Substance

9 Before consideration is given to the question whether the application is well founded, it must be borne in mind that, according to the consistent case-law of the Court, 'the adoption of interim measures to suspend the operation of a contested measure is not considered unless the factual and legal circumstances relied upon to obtain them establish a *prima facie* case for granting them' (*fumus boni juris*). 'In addition, there must be urgency in the sense that it is necessary for the measures to be adopted and to take effect before the decision of the Court on the substance of the case in order to avoid serious and irreparable damage to the party seeking them. Finally, the measures must be provisional in the sense that they do not prejudge the decision on the substance of the case'. Those conditions must be satisfied in circumstances such as those of this case where the applicant seeks the adoption of necessary interim measures under Article 186 of the EEC Treaty.

10 With regard to the existence of grounds establishing a *prima facie* case for granting the suspension applied for, the applicants contend, first, that the adoption of the decision of 19 April 1985 at the general meeting of the staff of the Economic and Social Committee is contrary to the first paragraph of Article 5 of Decision No 1896/75A of the Bureau of the Economic and Social Committee, according to which that meeting should have been held not later than one month before 20 April 1985, the date on which the term of office of the outgoing Committee expired. It follows in their view that the refusal of the President of the Economic and Social Committee to review that decision and to declare it unlawful is also illegal.

11 In its observations, the Economic and Social Committee does not rule out the possibility that the decisions in question may be illegal but does not adopt a clearly-defined position on that issue.

12 It must be noted that there are doubts as to whether this submission is well founded in view of the fact that, although the term of office of the outgoing Committee expired the day after 19 April 1985, the elections were not due to take place until one month later, which may be considered to be in conformity with the purpose of Article 5. However, since this submission does not appear to be

manifestly unfounded, the requirement of a *prima facie* case must be regarded as satisfied, without there being any need to consider whether the other submissions relied upon by the applicants are well founded.

13 With regard to the question of urgency, the applicants maintain that the electoral system established by decision of the general meeting held on 19 April 1985 would influence not only the outcome of the elections, as demonstrated at the hearing on 6 June 1985, but also the applicants' prospects of election. Moreover, the applicants maintain that if the elections are held in accordance with the new system introduced by the decision adopted on 19 April 1985 and if that decision is subsequently declared illegal by the Court, a series of subsequent measures will be rendered unlawful, without there being any possibility of fully remedying the serious and irreparable damage thereby caused except at the cost of provoking an irreversible series of disturbances.

14 The Economic and Social Committee does not dispute that argument. At the hearing it stated that in its view the grant of the suspension applied for would not lead to insurmountable difficulties as regards the functioning of the Staff Committee since the final paragraph of Article 5 of Decision No 1896/75A provides that after the expiry of its term of office the outgoing Staff Committee is to continue to function in order to deal with business in hand until the new Committee takes office.

15 It is clear from the documents before the Court that underlying this dispute is a conflict at the general meeting between two groups of officials with regard to the electoral system to be applied, since the system adopted is capable of influencing the outcome of the election. In those circumstances, it seems preferable if the elections take place after the Court has examined, in connection with the main application, the question whether the decision of the general meeting held on 19 April 1985 is lawful, as judgment can be delivered with little delay in accordance with the wishes expressed at the hearing. As is clear from the arguments presented by both parties, if the elections at issue were to be held immediately, they would create a situation the consequences of which would be difficult to reverse should the Court decide that the main application is well founded. Moreover, the Economic and Social Committee is not opposed to the suspension of the elections. It is therefore appropriate to grant the suspension applied for.

On those grounds,

THE PRESIDENT OF THE THIRD CHAMBER,

by way of interim decision,

hereby orders as follows:

(1) The elections to the Staff Committee of the Economic and Social Committee due to take place on 14 June 1985 are adjourned pending delivery of the judgment in the main proceedings;

(2) The costs are reserved.

Luxembourg, 11 June 1985.

P. Heim
Registrar

C. Kakouris
President of the Third Chamber