ORDER OF THE PRESIDENT OF THE COURT OF 5 DECEMBER 1979 [1]

B. v European Parliament

Case 731/79 R

In Case 731/79 R

B., medical practitioner, an official of the European Parliament, residing at Kelhen and represented by W. H. Vermeer, Advocate at the Amsterdam Bar, having an address for service in Luxembourg care of Dr P. Stein, 2 Avenue Pescatore,

applicant,

v

EUROPEAN PARLIAMENT, represented by F. Pasetti-Bombardella, Director-General of Administration, Personnel and Finance, Kirchberg, Luxembourg,

defendant,

APPLICATION for (a) an interim order on the European Parliament to put an end to all measures which might hinder the ascertainment of whether the applicant suffers from an occupational disease; (b) an interim order on the Medical Committee to proceed with all due diligence to a completion of the duties imposed upon it consequent upon its appointment under the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease and to communicate its opinion to the European Parliament, and (c) an order on that institution, whenever the Medical Committee shall have communicated its opinion to it, to notify the same to the applicant, in accordance with Article 21 of the Rules abovementioned.

THE JUDGE ACTING AS PRESIDENT in accordance with the second paragraph of Article 11 and Articles 90 (2) and 96 (1) of the Rules of Procedure of the Court

makes the following

1 — Language of the Case: Dutch

ORDER

Facts and Issues

By letter of 22 February 1978 addressed to the Secretary-General of the European Parliament, the applicant requested that there be put into operation the procedure relative to the making of a finding that he was suffering from an occupational disease within the meaning of Article 73 of the Staff Regulations of Officials of the European Communities.

By letter of 16 June 1978 the Director-General of Administration, Personnel and Finance of the European Parliament informed the applicant of his intention to proceed with the appointment of a "medical committee" having the task of reviewing the applicant's state of health; the relationship, if any, between his state of health and his working conditions at the Parliament and, finally, the "possible advisability of putting into operation the procedure for retirement on grounds of invalidity provided for in the Staff Regulations of Officials". This wording appears to have in view simultaneously the appointment, on the one hand, of the "Medical Committee" referred to in Articles 21 and 23 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease adopted, in regard to its own servants, by the Parliament on 27 January 1977 in the context of the implementation of the provisions of the Staff Regulations relating to occupational accidents and diseases suffered by officials, and, on the other hand, of the "Invalidity Committee" referred to in Article 7 of Annex II and Article 13 of Annex VIII to the Staff Regulations in the context of the implementation of the provisions of the Staff Regulations relating to termination of service and the awarding of invalidity pension to officials suffering from permanent invalidity preventing them from performing the duties corresponding to posts in their career brackets.

A Medical Committee made up of Doctors Maddens, Stein and Lahaye was duly appointed, but solely with a view to investigating whether the applicant was suffering from an occupational disease giving rise to the application of the provisions of the Staff Regulations relating to such a case. As at the date of the present order, that committee has not yet announced its opinion.

By a letter of 21 June 1979, the Secretary-General of the European Parliament informed the applicant of his intention to apply to his case the procedure for retirement on grounds of invalidity, in accordance with Articles 53 and 59 of the Staff Regulations. By the same letter, he requested the applicant to appoint, in accordance with Article 7 of Annex II to the Staff Regulations, one of the doctors who was to make up the Invalidity Committee, which the applicant did on 2 July 1979. The Parliament appointed Dr Maddens on 9 August 1979.

That Invalidity Committee has not yet been able to begin its work since the two doctors appointed by the parties have been unable to agree upon the name of the third doctor, with the result that the Parliament, in accordance with the second paragraph of Article 7 of Annex II to the Staff Regulations, has presented to the President of the Court of Justice a request for the appointment of a third doctor to make up the Invalidity Committee.

By letter of 16 September 1979 the applicant submitted to the appointing authority a complaint, within the meaning of Article 90 (2) of the Staff Regulations, in which he complained that the Medical Committee set up under Article 73 of the Staff Regulations (occupational disease) had not yet presented its opinion and objected to the setting in motion of the procedure concerned with possible retirement on the grounds of invalidity before the Medical Committee concerned with occupational disease had completed its work.

A study of the file shows that the applicant's complaint stems from the fear that a decision to place him in retirement under Articles 53 and 59 of the Staff Regulations would be such as would provide him with only an invalidity pension and deprive him, in particular, of the considerable cash benefits provided by Article 73 in the event that his inability to continue his duties was due to an occupational disease.

Availing himself of the power granted by Article 91 (4) of the Staff Regulations, the applicant, without waiting for the expiry of the period allowed to the appointing authority to reply to his complaint, immediately brought an action before the Court of Justice, seeking, in effect, the same objectives as his complaint.

In the application the Court is asked to:

"1. Declare that the application is admissible;

2. (a) Rule that the setting up or the working of an invalidity committee within the meaning of Article 59 (1) of the Staff Regulations is unlawful or at least is unjustified in the present circumstances and should therefore be terminated;

In the alternative, direct the European Parliament or its responsible bodies or officials to terminate or suspend the setting up or working of such a committee until a final decision has been taken in the examination of the applicant's occupational disease;

(b) Order the European Parliament or its responsible bodies or officials to put an end to all measures which may hinder, delay and/or thwart the work of the Medical Committee to ascertain whether the applicant suffers from an occupational disease;

(c) Rule that the Medical Committee's work be actively continued and completed as laid down in the Rules referred to in Paragraph 2 (a) of the application, in particular as laid down in Article 21 of those Rules;

3. Order the European Parliament to bear the costs."

At the same time, since Article 91 (4) of the Staff Regulations required him to do so, the applicant included with the action an application seeking the adoption of interim measures which was worded as follows:

"(a) To suspend the appointment of an invalidity committee under Article 59 of the Staff Regulations, or, in the event of that committee having already been appointed, to suspend its workings until a final decision has been taken concerning the applicant's occupational disease;

(b) To order the European Parliament or its responsible bodies or officials by way of an interim measure to put an end to all measures which

may hinder, delay and/or thwart the ascertainment of whether the applicant suffers from an occupational disease;

(c) To order the Medical Committee and/or its members by way of an interim measure to proceed with all due diligence to a completion of the duties imposed upon it consequent upon its appointment under the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease and to communicate its opinion to the European Parliament and to order that institution, whenever the Medical Committee shall have communicated its opinion to it, to notify the same to the applicant, in accordance with Article 21 of the Rules above-mentioned."

By written statement of defence lodged on 5 November 1979, the European Parliament sought the dismissal of the application for the adoption of interim measures and an order for costs against the applicant.

The parties were heard on the application for the adoption of interim measures at a hearing on 28 November 1979.

Decision

1 Under Article 83 (2) of the rules of procedure an application to suspend the operation of any measure adopted by an institution or for the adoption of any interim measure is not admissible unless there exist circumstances giving rise to urgency and the factual and legal grounds relied upon by the applicant establish a *prima facie* case for the application.

2 Those conditions are not fulfilled in the present case.

3 The request for an order that the Invalidity Committee may not be set up and that it be prohibited from undertaking investigations before a final decision regarding the possible existence of an occupational disease has been taken must be refused. It is indeed the same request as that which is made in the principal action and accordingly cannot be regarded as an interim measure which would not prejudice the substance of the case.

4 Moreover, under the fourth subparagraph of Article 59 (1) of the Staff Regulations the appointing authority may refer to the Invalidity Committee the case of any official whose sick leave totals more than twelve months in any

period of three years. It is established that that was the case as regards the applicant at the date when the Parliament decided to have recourse to that procedure. No matter of fact or of law has been advanced which would induce the belief that in putting that procedure into operation the defendant was pursuing objectives foreign to those for which that procedure was designed.

5 The applicant's fear that the putting into operation or even the conclusion of the procedure concerned with premature retirement under Articles 53 and 59 of the Staff Regulations could have an adverse effect upon the outcome of the procedure concerned with establishing, in the context of Article 73 of the same Staff Regulations, the existence of the conditions necessary for the awarding of the benefits provided in the case of occupational disease appears to be groundless when regard is had to the clear wording of the said Article 73, the last sentence of paragraph (2) of which provides expressly that the benefits payable in the case of occupational disease may be paid in addition to those provided for in the case of invalidity within the meaning of Article 59 of the Staff Regulations. At all events, such a fear does not warrant the adoption of interim measures delaying the operation of the procedure laid down in the Staff Regulations for a case where prolonged periods of sick leave raise doubts as to the ability of the official in question to continue to perform his duties. On the contrary, there is reason to believe that it is as much in the proper interests of the official as in those of the institution that, if they are not to be co-ordinated, the two procedures should at least proceed in parallel and that they should be brought to a conclusion at the same time or, in any event, without any excessive time-lag.

6 The interests of the applicant are adequately protected by the fact that his principal application, being also directed against the setting up of the Invalidity Committee, leaves open the possibility of considering whether it is necessary to annul that decision, if it should appear, on the basis of grounds advanced by the applicant, that it is tainted with illegality.

7 The request for an order that the Medical Committee entrusted with the task of investigating whether the applicant is suffering from an occupational disease should pursue its work with diligence ("met voortvarenheid") and that the defendant should be prohibited from delaying the progress of its work is without substance. At the present stage of the proceedings no point

of fact or law has been advanced which demonstrates the likelihood of neglect or hostility on the part of the defendant in this regard. It appears on the contrary that the delay is due, on the one hand, to circumstances independent of the parties' wishes, the repetition of which may be avoided by the diligence of the Medical Committee, and on the other hand, to the attitude of the applicant himself who has, on several occasions, omitted or refused to keep appointments made with the Medical Committee.

8 The applicant has accordingly not put forward, under any head of his application for the adoption of interim measures, factual or legal submissions which justify the application, with the result that it must be dismissed.

Costs

9 It is appropriate at this stage to reserve costs.

On those grounds,

THE JUDGE ACTING AS PRESIDENT

by way of interlocutory decision,

makes the following

ORDER

1. **The application for the adoption of interim measures is dismissed;**
2. **Costs are reserved.**

Luxembourg, 5. December 1979

For due Registrar

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
Judge acting as President