ORDER OF THE PRESIDENT OF THE FIRST CHAMBER
OF THE COURT
11 DECEMBER 1984 [1]

Assunta Licata
v Economic and Social Committee

(Staff Committee — Cessation of a member's term of office)

Case 270/84 R

Application for interim measures — Suspension of operation of a measure — Conditions for granting

(Rules of Procedure, Art. 83 (2))

The adoption of interim measures to suspend the operation of a measure is not considered unless the factual and legal circumstances relied upon to obtain them establish a *prima facie* case for granting them. In addition there must be urgency in the sense that it is necessary for the measures to be issued 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, they must be provisional in the sense that they do not prejudge the decision on the substance of the case.

In Case 270/84 R

ASSUNTA LICATA, an official of the Economic and Social Committee of the European Communities, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Decker, 16 Avenue Marie-Thérèse,

applicant,

v

ECONOMIC AND SOCIAL COMMITTEE OF THE EUROPEAN COMMUNITIES, represented by Detlef Brüggemann, a member of the Directorate for Personnel, acting as Agent, 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,

1 — Language of the Case: French.

APPLICATION under Article 83 of the Rules of Procedure for suspension of the operation of Decision No 173/84 A of 7 May 1984 of the Chairman of the Economic and Social Committee, amending Decision No 1896/75 A of the Bureau of the Economic and Social Committee of 28 July 1975, governing the composition and procedure of the Staff Committee, and for the suspension of the operation of the decision of the Economic and Social Committee to organize *ad hoc* elections for the purpose of filling the applicant's seat on the Staff Committee,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT,

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

makes the following

ORDER

Facts and Issues

By Decision No 1896/75 A of 28 July 1975 of the Bureau of the Economic and Social Committee (hereinafter referred to as "the ESC"), a staff committee was set up pursuant to Article 9 of the Staff Regulations of Officials of the European Communities (hereinafter referred to as "the Staff Regulations") and Article 1 of Annex II thereto.

Article 3 of that decision provides as follows:

"The Staff Committee of the Economic and Social Committee shall be composed of nine members. It shall include at least one representative of the various categories and services set out in Article 5 of the Staff Regulations, and of the servants referred to in the first paragraph of Article 7 of the Conditions of Employment of Other Servants. . . ."

The second paragraph of Article 5 of the decision provides that the term of office of members of the Staff Committee expires two years from the date of their election, or after such shorter period as the Institution may appoint.

The third sentence of that paragraph is worded as follows:

"The term of office of a member of the Committee shall also end on resignation or on termination of service."

Mrs Licata, who was at the time a servant employed by the ESC, was elected to the Staff Committee as a representative of the servants referred to in the first paragraph of Article 7 of the

Conditions of Employment of Other Servants. Her term of office was due to expire at the end of March 1985.

After being elected, however, Mrs Licata was appointed as an official following an internal competition.

As the Staff Committee took the view that that event cast doubt on Mrs Licata's capacity to represent the category of Other Servants, the Chairman of the ESC, after obtaining the assent of its officers and at the express request of the Staff Committee, adopted Decision No 173/84 A on 7 May 1984, Article 2 of which replaces the third sentence of the second paragraph of Article 5 of Decision No 1896/75 A, mentioned above, with the following text:

"The term of office of a member of the Committee shall also end on resignation, termination of service or transfer to another category, service or conditions of employment where conditions of representativity of the Staff Committee set out in Article 3 are no longer met."

In pursuance of that decision, which was initially suspended by the Secretary-General of the ESC and then reinstated, the Staff Committee decided on 25 June 1984 to disregard the vote cast by Mrs Licata, who had none the less taken part in the meeting, and it further expressly decided, on 28 June 1984, to regard Mrs Licata's term of office as having ended by virtue of the new Article 5. It therefore convened a general meeting of the staff on 12 October 1984, in the course of which it was decided to hold *ad hoc* elections to replace Mrs Licata.

The elections, originally set for 7 November 1984, were postponed until the 16th of that month. Since a quorum was not reached a second ballot became necessary and was arranged for a later date.

On 6 November 1984 Mrs Licata lodged a complaint under Article 90 (2) of the Staff Regulations, in which she sought the annulment both of the aforesaid Decision No 173/84 A and of the implied decision by the administration to exclude her from the Staff Committee.

Without awaiting the outcome of her complaint, Mrs Licata brought an action pursuant to Article 91 (4) of the Staff Regulations, for the annulment both of the aforesaid Decision No 173/84 A and of the ESC's decision to organize, in pursuance thereof, *ad hoc* elections for the purpose of filling the applicant's seat on the Staff Committee.

The application was lodged at the Court Registry on 14 November 1984.

By an application lodged at the Court Registry on the same day, Mrs Licata further requested that the operation of the decisions contested in the main proceedings be suspended.

In a document lodged at the Court Registry on 30 November 1984, the ESC submitted its written observations on the application for suspension.

At the hearing on 10 December 1984 in the interlocutory proceedings the parties presented oral argument.

The Court heard the views of the Advocate General, Mr Darmon, who took part in the hearing.

Decision

1 By an application received at the Court Registry on 14 November 1984, Mrs Assunta Licata, an official of the Economic and Social Committee (hereinafter referred to as "the ESC"), brought an action for the annulment of (a) Decision No 173/84 A of the Chairman of the ESC of 7 May 1984 amending Decision No 1896/75 A of the Bureau of the ESC of 28 July 1975 on the composition and procedure of the Staff Committee, and (b) the ESC's decision to hold *ad hoc* elections pursuant to the aforesaid decision, for the purpose of filling the applicant's seat on the Staff Committee.

2 By an application lodged on the same day, Mrs Licata further requested, under Article 83 *et seq.* of the Rules of Procedure, a suspension of the operation of the above decisions.

3 The admissibility of the application for suspension is not contested.

4 Before considering the merits of the application it should be recalled that, according to established case-law of the Court (see, most recently, the Order of the President of the Court of 19 July 1983, Case 120/83 R, *Raznoimport* v *Commission,* [1983] ECR 2573), 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. 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.

5 As regards the existence of grounds establishing a *prima facie* case for granting the suspension applied for, Mrs Licata claims that the transfer of an elected member of the Staff Committee to a category, service or scheme of employment other than the one for which he was elected is not liable to

eliminate his knowledge of the specific problems of the original category, service or scheme of employment. Mrs Licata concludes from the foregoing that her continued presence on the Staff Committee is in no way inconsistent with the fourth paragraph of Article 1 of Annex II to the Staff Regulations, according to which "Membership of the Staff Committee . . . shall be such as to ensure the representation of all categories of officials and of all services provided for in Article 5 of the Staff Regulations and also of the servants referred to in the first paragraph of Article 7 of the Conditions of Employment of Other Servants of the Communities." She takes the view that Decision No 173/84 A is therefore illegal.

6 Mrs Licata further states that even on the supposition that the diputed decision is legal, it cannot entail the exclusion of the applicant from the Staff Committee, since it is a legislative provision which cannot be applied retroactively. In that connection, she recalls that at the time of her election there was no provision whereby her term of office would terminate on the grounds of transfer to another category, service or scheme of employment.

7 According to the ESC Mrs Licata's assertions are unfounded. It emphasizes in particular that it was the Staff Committee itself which had sought the adoption of Decision No 173/84 A, and that the ESC gave effect to the proposal after studying the matter carefully. Moreover, it points out that it was the Staff Committee itself which enforced the contested decision against Mrs Licata.

8 Without in any way prejudging the Court's decision on the substance of the case, it is sufficient to record that the grounds put forward by Mrs Licata in order to make out a *prima facie* case are not manifestly unfounded, inasmuch as they might be justified by the fact that the contested provision was not in force at the time of her election.

9 As regards the question of the urgency of the suspension applied for, Mrs Licata argues that that condition is satisfied in this case since, as a consequence of the enforcement of Decision No 173/84 A of the Chairman of the ESC, she is prevented from performing her duties as a member of the Staff Committee for the normal duration of her term of office. That consequence is aggravated by the decision to hold *ad hoc* elections to fill the applicant's seat.

10 The ESC has contested the validity of that ground of application, contending that the regularization of the composition of the Staff Committee cannot subsequently be delayed by suspension.

11 That argument of the ESC cannot be accepted. The very fact that a decision taken on 7 May 1984 has not yet been followed by the election of a new representative of the category of Other Servants shows that the urgency pleaded by the ESC for the immediate implementation of the disputed decision does not exist.

12 As regards the existence of serious and irreparable damage, Mrs Licata takes the view that preventing her from participating in the meetings of the Staff Committee distorts the representative balance within the Committee. That, according to the applicant, constitutes serious and irreparable damage, especially as the judgment of the Court of 9 March 1977 *(de Dapper* v *Parliament,* Case 54/75, [1977] ECR 471) shows that decisions adopted by an improperly constituted Staff Committee cannot subsequently be challenged.

13 In reply, the ESC maintains that damage far more serious and far less susceptible of repair than that which Mrs Licata claims to have suffered would be done to the work of the Staff Committee, inasmuch as the suspension applied for would have the effect of blocking the *ad hoc* elections and would thereby compromise the Committee's representativity, as required by the Staff Regulations.

14 In that regard it should be observed that to dismiss the application for suspension would cause serious harm to the applicant and to the ESC, in the sense that the applicant would be prevented from participating in the meetings of the Staff Committee and the ESC would be obliged to hold *ad hoc* elections which might raise problems of legality should the Court hold the application in the main proceedings to be well founded.

15 Lastly, the ESC argues that the suspension sought by Mrs Licata would prejudice the decision on the substance of the case, contrary to the rule laid down in Article 86 (4) of the Rules of Procedure. It contends that, in view of the time required by the Court to reach a decision in the main proceedings, such a suspension would probably have the effect of enabling Mrs Licata to serve out her term of office until its normal expiry, at the end of March 1985.

16 That argument cannot be accepted. The fact that Mrs Licata's term of office is nearing its end may not be used as a ground for denying her the possibility, for which express provision is made by Article 91 (4) of the Staff Regulations, of requesting a suspension of the operation of the decisions adversely affecting her.

17 It follows from the foregoing considerations that, pending delivery of judgment in the main proceedings, an order should be made for the suspension of Decision No 173/84 A of the Chairman of the Economic and Social Committee of 7 May 1984 in so far as it introduces as a cause of cessation of a term of office as a member of the Staff Committee transfer to another category, service or scheme of employment and also for the suspension of the *ad hoc* elections held pursuant to that decision.

On those grounds,

THE PRESIDENT OF THE FIRST CHAMBER,

by way of interim decision,

hereby orders as follows:

1. **Pending delivery of judgment in the main proceedings, Decision No 173/84 A of the Chairman of the Economic and Social Committee of 7 May 1984 is suspended in so far as it introduces as a cause of cessation of a term of office as a member of the Staff Committee transfer to another category, or service or scheme of employment. The *ad hoc* elections held in pursuance of that decision are likewise suspended.**

2. **The costs are reserved.**

Luxembourg, 11 December 1984.

J. A. Pompe
Deputy Registrar

G. Bosco
President of the First Chamber