Case 148/88 R

Alessandro Albani and Others
v
Commission of the European Communities

(Officials — Competition — Interim measures)

Order of the President of the Second Chamber of the Court, 21 June 1988 3361

Summary of the Order

Applications for interim measures — Suspension of operation — Conditions for granting — Prima-facie case
(Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT
OF THE SECOND CHAMBER OF THE COURT
21 June 1988 *

In Case 148/88 R

Alessandro Albani, Alberto Caferri, Claudio Caruso, officials of the Commission of the European Communities,

and

Bruno Buffaria,

all represented by Benoît Liesenberg, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, 11 boulevard Royal,

applicants,

supported by

* Language of the Case: French.

Union syndicale, represented by Jean-Noël Louis, of the Brussels Bar,

and

Syndicat des fonctionnaires internationaux et européens, represented by Michel Deruyver, of the Brussels Bar,

interveners,

v

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

defendant,

APPLICATION for an order suspending, as an interim measure, the compilation or publication of the list of suitable candidates resulting from Competition No COM/A/482,

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 lodged at the Court Registry on 25 May 1988, Alessandro Albani, Alberto Caferri and Claudio Caruso, officials of the Commission of the European Communities, and Bruno Buffaria, brought an action for the annulment of the procedure for marking the written tests in Competition No COM/A/482

or, in the alternative, for the annulment of the Selection Board's decision not to admit the applicants to the oral tests in that competition.

2 By a separate document lodged on the same day pursuant to Article 83 of the Rules of Procedure, the applicants asked the Court to suspend, by way of an interim measure, the procedure in Competition No COM/A/482, and, in particular, to suspend the compilation or publication of the list of suitable candidates resulting from that competition.

3 The Commission submitted its written observations on 6 June 1988. The parties presented oral argument on 13 June 1988.

4 By applications lodged at the Court Registry on 12 June 1988, the Union syndicale and the Syndicat des fonctionnaires internationaux et européens sought leave to intervene both in the main proceedings and in the interim proceedings in support of the applicants' conclusions.

5 By order of 13 June 1988 the President of the Second Chamber granted the Union syndicale and the Syndicat des fonctionnaires internationaux et européens leave to intervene in the interim proceedings. The interveners submitted their observations at the hearing on 13 June 1988.

6 It is apparent from the documents before the Court that Competition No COM/A/482 is an open competition, based on qualifications and tests, organized by the Commission in order to constitute a reserve of administrators (Career Bracket A 7/A 6) in the field of agriculture, fisheries and cooperation with developing countries. Although it was an open competition, the Notice of Competition (published in Official Journal C 34 of 12 February 1987) laid down specific conditions of admission, particularly with regard to the age-limit and the qualifi-

cations required in the case of officials and other servants of the European Communities in Category B.

7 The written tests in the competition comprised, according to the Notice of Competition, a test consisting of a series of multiple-choice questions to test candidates' knowledge in the fields covered by the competition, and a drafting test based on a case study and designed to test candidates' analytical ability and their experience of dealing with case studies.

8 The written tests took place on 20 November 1987 in some 20 different examination centres in Europe, South America, Africa and Australia.

9 The first written test, according to the Notice of Competition, was eliminatory, the second test being marked only in the case of candidates who obtained a pass mark in the first test.

10 Candidates who obtained a pass mark in the second written test and an aggregate, in the two written tests, of at least 60% of the highest possible mark were admitted to the oral test.

11 By letters of 21 March 1988, the applicants were notified that the Selection Board had been unable to admit them to the oral test.

12 It is apparent from the information supplied by the Commission at the hearing in the interim proceedings that 2 105 candidates applied to take part in the competition. Of these, 877 candidates were admitted to the competition and took part in the written tests. Of these, 369 candidates, including the applicants, obtained the pass mark in the first written test, but only 172 candidates were admitted to the oral test. 67 candidates were placed on the list of suitable candidates drawn up on 26 May 1988.

13 It must be borne in mind that Article 83 (2) of the Rules of Procedure requires applicants to state, in particular, the factual and legal grounds establishing a prima-facie case for the interim measures applied for.

14 In that regard, the applicants contend that the conduct of the written tests and the marking of the second written test were vitiated by irregularities.

15 As regards, first of all, the conduct of the written tests, the applicants allege that the Selection Board organized those tests in such a way that, in view of the time difference, the last written test in Canberra, Australia, ended two hours before the commencement of the first written test in Brussels. The applicants suspect that some of the candidates in Brussels had knowledge of the case study forming the subject-matter of the second written test before the commencement of that test. According to persistent rumours which reached the interveners, those candidates received, either before the commencement of the tests or during the lunch break between the two written tests, information originating in Canberra.

16 The applicants point out that on 3 December 1987 the Union syndicale had asked the Commission for information on what precautions had been taken in order to prevent leaks occurring as a result of the time differences and that, in reply, by letter of 2 February 1988, the Commission merely stated that certain precautions had been taken and that in view of the nature of the written papers no appreciable advantages could be derived from prior knowledge of them.

17 At the hearing in the interim proceedings, the Commission pointed out that the precautions taken to eliminate the risk of leaks referred to by the applicants consisted of the collection, at the end of the tests, of the papers distributed in Canberra, and the organization by the Commission's delegate in Australia, after the last written test, of a cocktail party for the candidates in Canberra, which kept them occupied until the commencement of the tests in Brussels. Since the second written test required the candidates to use their deductive powers and to think for themselves, the Commission did not consider it necessary to take additional precautions for that test. Furthermore, after being notified of the rumours referred to by the applicants, the Commission carried out an investigation and established,

in particular, that no telephone calls were made to Brussels from the Commission's Canberra office during the hours in which a leak could have occurred.

18 With regard to that allegation, it is sufficient to point out that, in the absence of firm evidence capable, even indirectly, of establishing the existence of a leak, the rumours and theoretical possibilities of a leak to which the applicants refer cannot justify the grant of the interim measures applied for.

19 Next, as regards the marking of the second written test, the applicants allege that the Selection Board applied criteria which were at variance with the instructions given to candidates regarding the work required for that test. Candidates were strictly told not to exceed 800 words in total and it was pointed out that scripts exceeding 800 words would not be marked. In order to avoid any complaints, candidates were instructed to state the number of words they had used. However, in its instructions to the examiners, the Selection Board asked them to ascertain only whether the number of words used was well in excess of 800 and not to mark scripts that were manifestly too long, that is to say those of more than 1 200 words. In the applicants' view, the principle of equal treatment was therefore manifestly contravened.

20 The applicants point out that, in a letter dated 9 February 1988, the Union syndicale had drawn the Commission's attention to the lack of consistency between the instructions given to candidates and the instructions given to the examiners and that, in reply, in a letter dated 9 March 1988, the Commission stated that, after careful consideration of the instructions in question, its view was that the Selection Board had taken a decision for the benefit of the candidates as a whole without prejudicing the quality of the results of the marking of individual papers.

21 The applicants also point out that, in reply to a question put by Mr Albani, the Commission stated that the 800-word limit was imposed in order to ensure that answers were of comparable length but that at the time of marking the Selection Board decided not to penalize answers that were slightly longer, since it is impossible to apply such a limit mathematically if linguistic differences are taken into account.

22 The Commission stated at the hearing in the interim proceedings that as early as 8 January 1988 the Selection Board had drawn up the instructions to examiners referred to by the applicants without knowing the number of candidates whose second tests would be marked and who had exceeded the 800-word limit, since the marking of the first written tests, which were eliminatory, had not been completed. According to the Commission, in issuing those instructions the Selection Board had intended to retain the right to make the decision itself in the event of that limit being exceeded and to confer on the examiners merely a discretion to reject scripts that were manifestly too long.

23 The Commission also stated at the hearing in the interim proceedings that only 5 of the 172 candidates who, according to the examiners, had passed the written test, exceeded the 800-word limit. One candidate had used 810 words, two had used between 820 and 830 words, one had used 847 words and one had used 850 words. Those candidates were not eliminated for exceeding the word limit. However, none of those candidates had passed the oral test and they had not therefore been placed on the list of suitable candidates.

24 Although it is regrettable that those specific points of information, which do not reveal the identities of the candidates concerned, were not provided by the Commission either in reply to the requests for information made by the interveners and the applicants or in the written observations submitted to the Court, it is necessary, at this stage of the proceedings, to take them as a basis for the decision of the Court. According to that information, the alleged irregularity involved in the marking of the second written test does not appear to have been capable of appreciably distorting the final outcome of the competition and cannot therefore justify the grant of the interim measures applied for.

25 Since the first condition for the grant of interim measures is not fulfilled, it is unnecessary to consider the other conditions laid down by Article 83 (2) of the Rules of Procedure and the application for interim measures must be dismissed.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER,

by way of interim decision,

hereby orders as follows:

(1) The application for interim measures is dismissed;

(2) The costs are reserved.

Luxembourg, 21 June 1988.

J.-G Giraud
Registrar

O. Due
President of the Second Chamber