ORDER OF THE PRESIDENT OF THE FIRST CHAMBER
OF THE COURT
15 OCTOBER 1976 [1]

Joëlle de Lacroix
v Court of Justice of the European Communities

Case 91/76 R

In Case 91/76 R,

JOËLLE DE LACROIX, represented by Nicola Catalano, Advocate, of Rome, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Centre Louvigny,

applicant,

v

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, represented by A. Van Houtte, acting as Agent,

defendant,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

ORDER

Facts

On 27 September 1976 the applicant lodged an application for the annulment of the refusal by the administration of the Court of Justice to accept her application for the post of lawyer/linguist of French mother tongue, in particular

1 — Language of the Case: French.

on the grounds that the refusal did not state the reasons on which it was based and was obviously unjustified.

On the same day, she made an application under Article 83 of the Rules of Procedure 'to suspend the operation of the decision of the Administration of the Court of Justice notified to the applicant on 27 July 1976, and thereby to declare that the applicant is entitled to be allowed, provisionally if need be, to take the tests for the competition for the post of lawyer/linguist of French mother tongue'.

By a statement of 6 October 1976, the defendant, explaining that this case concerns not a recruitment procedure within the meaning of the Staff Regulations of Officials but the engagement of temporary staff within the meaning of Article 2 (b) of the Conditions of Employment of Other Servants of the European Communities, disputed the allegation that the continuation of the engagement procedure could cause the applicant irreparable injury and contended that the application should be dismissed.

The parties were duly summoned and appeared before the President on 15 October 1976 and submitted their observations.

The parties maintained their conclusions, the applicant applying in the alternative for the suspension of the continuation of the engagement procedure, which should moreover, in her submission, be considered as a recruitment procedure within the meaning of the Staff Regulations of Officials.

Law

1 Under Article 83 (2) of the Rules of Procedure any suspension of operation is subject to the existence of circumstances giving rise to urgency and of grounds establishing a *prima facie* case for such a measure.

2 As to the nature of the measure applied for, provisional admission to the tests in question would amount not to a suspension of the operation of the contested measure but to a complete reversal, even though only provisional, of such a nature as to denude the main action of its purpose.

3 Therefore the Court has jurisdiction only to suspend, if necessary, the engagement procedure in progress.

4 Such a suspension would involve serious difficulties for the defendant, since the procedure, as set forth in the defendant's undisputed statement, is aimed

at temporarily filling as soon as possible three vacant posts in a section which comprises eight posts in all.

5 Furthermore any such suspension would also involve serious inconvenience for the other candidates.

6 In these circumstances, it is necessary, under Article 83 (2) of the Rules of Procedure, to examine 'the factual and legal grounds establishing a *prima facie* case for the ... measures' applied for.

7 To the extent to which they were set out at the hearing, the grounds alleged raise two questions, first whether Article 5 of Annex III to the Staff Regulations of Officials applies, if only by analogy, to the procedure in dispute, and secondly whether that provision requires that the decisions referred to in the fourth paragraph — which the contested decision might be regarded as resembling — should be accompanied by a statement of the reasons on which they are based.

8 In view first of the disadvantages of a suspension and secondly of the questionable nature of the grounds alleged, there is no case for suspending the procedure.

9 Therefore the application must be dismissed.

Costs

10 In the circumstances costs should be reserved.

On those grounds,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

by way of interlocutory decision, hereby orders:

1. The application is dismissed;

2. Costs are reserved.

Luxembourg, 15 October 1976.

H. Gentin
(Legal Secretary)
Acting Registrar

A. M. Donner
President of the First Chamber