Case 63/88 R

Claude Maindiaux and Others
v
Economic and Social Committee

(Interim measures — Officials — Suspension of operation — Staff Committee elections)

Order of the President of the Fourth Chamber of the Court, 15 March 1988 1659

Summary of the Order

Interim measures — Suspension of operation — Conditions for granting — Serious and irreparable damage
(EEC Treaty, Arts 185 and 186; Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT
OF THE FOURTH CHAMBER OF THE COURT
15 March 1988 *

In Case 63/88 R

Claude Maindiaux,

Raymond Muller, and

Francis Patterson,

* Language of the Case: French.

officials of the Economic and Social Committee, assisted and represented by J.-N. Louis, of the Brussels Bar, 149 avenue Winston Churchill, B-1180 Brussels, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, avocat at the Cour d'appel (Court of Appeal), Luxembourg, 11, boulevard Royal,

applicants,

v

Economic and Social Committee, represented by Detlef Brüggemann, Agent, 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 operation of the decision of the Election Board of the Economic and Social Committee of 8 February 1988 to organize elections to the Staff Committee in accordance with the 'Supar' (scrutin uninominal préférentiel avec report de voix (single transferable vote)) voting system and the postponement of the elections scheduled for 17 March 1988.

THE PRESIDENT OF THE FOURTH CHAMBER

ruling pursuant to Articles 9 (4) and 96 of the Rules of Procedure,

makes the following

Order

1 By an application lodged at the Court Registry on 29 February 1988 Messrs Maindiaux, Muller and Patterson, officials of the Economic and Social Committee (hereinafter referred to as 'the ESC'), lodged an application for interim measures

requesting the suspension of the operation of the decision of the Election Board of the ESC of 8 February 1988 to organize elections to the Staff Committee in accordance with the 'Supar' voting system and the postponement of the elections scheduled for 17 March 1988.

2 By Decision No 1896/75A of 28 July 1975 the Bureau of the ESC adopted provisions on the composition and procedure of its Staff Committee. Under Article 5 (1) of that decision 'The members of the Staff Committee shall be elected in accordance with the conditions laid down by the general meeting of officials of the ESC, which must be held not later than one month before the expiry of the term of office of the outgoing committee . . . '. The system and conditions for holding elections to the Staff Committee were last laid down by the 'Rules for Elections to the Staff Committee' (Document CP 153/83 of 4 March 1983) which set up a proportional voting system known as 'Supar'.

3 At a general meeting of the staff called on 21 March 1985 and held on 25 March 1985, the agenda of which dealt *inter alia* with the appointment of an Election Board, in anticipation of elections to the new Staff Committee to replace the outgoing committee whose term of office was due to expire on 20 April 1985, the ESC section of the Union syndicale (European Public Service Union), a trade union for Community officials, proposed the amendment of the voting rules in force. The staff meeting to deal with that point was adjourned until 19 April 1985. The general meeting of the staff held on that date did indeed adopt a voting system of the first-past-the-post variety and further decided that the new voting system would be immediately applicable in view of the forthcoming elections to the Staff Committee.

4 On 22 April 1985, Mr Müllers, acting on behalf of his trade union (the ESC section of the FFPE (Fédération de la fonction publique européenne)) submitted to the Chairman of the ESC a request pointing out that the amendment of the rules for the elections was unlawful because the staff meeting which had adopted it had been held the day before the term of office of the outgoing Staff Committee had expired, whereas it should have been held at the latest one month prior thereto, in accordance with Article 5 of Decision No 1896/75 A quoted above. Mr Müllers accordingly requested the Chairman of the ESC to draw the attention of the

Chairman of the Election Board, who was appointed by the general meeting of 19 April 1985, to the fact that the elections to the Staff Committee for the years 1985 to 1987 should take place in accordance with the prevailing voting system as contained in the rules for election to the Staff Committee, Document CP 153/83, of 4 March 1983.

5 By a letter of 24 April 1985 the Chairman of the ESC refused to accede to that request.

6 On 17 May 1985 Messrs. Diezler, Deasy, Fink-Jensen, Müllers and Ricci brought proceedings against the ESC before the Court (Case 146/85) seeking the annulment of:

(a) the rules or text adopted by the general meeting of the staff of the ESC on 19 April 1985 on the voting system for the Staff Committee;

(b) all subsequent measures taken by way of implementation of that text, in particular the elections to the Staff Committee due to take place on 19 June 1985 and all appointments made by the Staff Committee to various bodies;

(c) in so far as was necessary, the rejection of 24 April 1985 of the complaint made by the fourth applicant, Mr Müllers.

7 By an application lodged on the same date the applicants applied to the Court for an interim order postponing the elections to the Staff Committee until the Court had delivered its judgment.

8 By an Order of 11 June 1985 the President of the Third Chamber ordered a postponement of the elections to the Staff Committee pending delivery of the judgment in the main proceedings.

9 On 18 July 1985 the same five applicants lodged a complaint addressed to the Chairman, Secretary-General and appointing authority of the ESC by which they sought a declaration that the voting rules adopted on 19 April 1985 were null and void and asked that the Chairman of the Election Board be informed that the rules could not be applied to the elections to the Staff Committee. By a memorandum of 29 October 1985 that complaint was rejected as inadmissible.

10 On 23 December 1985, following that rejection, the applicants lodged a further application (Case 431/85) also seeking the annulment of the decision on new voting rules adopted by the staff meeting of the ESC on 19 April 1985 and subsequent measures taken pursuant thereto and of the rejection by the ESC of their complaint of 18 July 1985; the application also sought a declaration that the ESC should take all appropriate steps to prevent the measures challenged by the application for annulment from having any effect whatsoever.

11 By a judgment of 25 June 1986 the Court ordered that Cases 146/85 and 431/85 be joined for the purposes of the oral procedure and the judgment.

12 In its judgment of 27 October 1987 ([1987] ECR 4283) the Court dismissed as inadmissible the applications brought by the applicants other than Mr Müllers in Case 146/85 and the application brought by Mr Müllers in Case 431/85 and annulled the decision of the general meeting of the staff of the ESC of 19 April 1985 on a voting system for the election of its Staff Committee, together with the decisions of the Chairman of the ESC rejecting the complaint made by Mr Müllers on 22 April 1985 and by the other applicants on 18 July 1985.

13 Following the Court's judgment, the Secretary-General of the ESC sent on 5 November 1987 a memorandum to the Chairman of the Election Board, appointed on 19 April 1985, requesting him to organize elections to the Staff Committee on the basis of the voting system in force on 20 March 1985, namely the 'Supar' system. Since the members of the Election Board considered that they were not in a position to organize the elections properly on the basis of that system, they submitted their resignation on 9 November 1987.

14 By an application lodged on 20 November 1987 Mr Maindiaux and others, interveners in Joined Cases 146 and 431/85, brought an action, now pending, for interpretation of the Court's judgment of 27 October 1987.

15 Following the Election Board's resignation, the Staff Committee called a general meeting which was held on 11 December 1987 and at which a new Election Board was appointed.

16 On 8 February 1988, after several consultations with the Secretary-General of the ESC, the Election Board decided to organize elections to the Staff Committee in accordance with the 'Supar' voting system on 17 March 1988.

17 On 29 February 1988 Messrs Maindiaux, Muller and Patterson brought proceedings for the annulment of the said decision of the Election Board of 8 February 1988 and other measures of the Secretary-General of the ESC. On the same date they brought the present proceedings for the adoption of interim measures.

18 The defendant submitted its written observations on 8 March 1988. Since the parties' written pleadings contain all the information necessary for the Court to rule on the application for interim measures, it did not appear necessary to hear oral argument from the parties.

19 According to the applicants, the application for interim measures is admissible in view of the fact that, as the Court stated in its judgment of 29 September 1976 in Case 54/75 *(De Dapper* v *Parliament* [1976] ECR 1381), review by the Court of the legality of measures concerning elections to the Staff Committee can take place within the framework of an application directed against the institution concerned. Furthermore, the applicants had first lodged administrative complaints against the various decisions to organize the election of members of the Staff Committee according to the 'Supar' voting system.

20 As far as the existence of grounds establishing a prima facie case for granting interim measures is concerned, the applicants claim that the Election Board's decision to organize elections in accordance with the 'Supar' voting system is contrary to Article 5 of the abovementioned Decision No 1896/75A in view of the fact that, under that provision, the voting system may only be adopted by a general meeting held at the end of the Staff Committee's term of office and may not be extended unless the general meeting expressly so decides. Any decision which imposes a voting system that has not been expressly adopted by the general meeting at the end of the outgoing Staff Committee's term of office is thus illegal.

21 As regards urgency, the applicants believe that the voting system adopted by the Election Board will influence the outcome of the elections. Furthermore, if elections were to be held in accordance with the 'Supar' system, in the event that the Court should hold the elections thus organized to be illegal, a series of measures consequent thereon would be vitiated by illegality and it would not be possible to remedy completely the serious and irreparable damage caused without setting up an irreversible chain reaction. In the present case the dispute between the applicants and the ESC is the consequence of the decision of the Secretary-General of the ESC to organize the election of members of the Staff Committee, following the judgment of the Court of Justice of 27 October 1987, in accordance with the 'Supar' voting system.

22 The ESC considers that the application for interim measures should be dismissed because no prima facie case can be established and the urgency which must exist for suspension to be granted is lacking.

23 As regards the lack of a prima facie case, the ESC contends that the application for annulment is manifestly inadmissible since the applicants have no interest in bringing the proceedings. The application for annulment and the application for interim measures, both lodged on 29 February 1988, merely reiterate the point of view put forward and defended by the applicants, as interveners, in the previous Joined Cases 146 and 431/85 in which the Court delivered its judgment on 27 October 1987. The application for interim measures is also inadmissible because the so-called decisions of the Secretary-General of the ESC are, in reality, mere opinions with regard to the voting system to be applied and those opinions were necessary to ensure compliance with the judgment of the Court in accordance with Article 176 of the EEC Treaty. The application for interim measures is in any event ill-founded, since the abovementioned judgment of 27 October 1987 is perfectly clear with regard to the problem raised by the applicants.

24 On the other hand, the ESC considers that there is no urgency in the sense that if the applicants' request that the elections to the Staff Committee scheduled for 17 March be postponed is not granted, no serious and irreparable damage will be caused to them. On the contrary, the grant of the measures sought by the applicants would be seriously detrimental to the interests of the staff in general who, for three years, have been represented by a Staff Committee which could deal only with matters in hand. In short, the ESC considers that the further postponement of the elections requested by the applicants would cause serious and irreparable harm, not to the applicants, but to the entire staff of the institution and consequently to the institution itself.

25 It should be borne in mind that under Article 185 of the EEC Treaty actions brought before the Court of Justice are not to have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended. It may also prescribe any necessary interim measures.

26 Pursuant to Article 83 (2) of the Rules of Procedure of the Court, suspension of the operation of any measure and the adoption of interim measures are conditional on the existence of circumstances giving rise to urgency and grounds establishing a prima facie case for the interim measures applied for.

27 The Court has consistently held that the urgency of an application for interim measures, as referred to in Article 83 (2) of the Rules of Procedure, must be assessed in relation to the necessity for an order granting interim relief in order to prevent serious and irreparable damage to the party requesting the interim measures (see, for instance, the Order of 6 February 1986 in Case 310/85 R *Deufil GmbH & Co. KG* [1986] ECR 537).

28 The applicants in this case have not established that implementation of the decision at issue would cause them serious and irreparable damage. On the other hand, if the measures requested in the application for interim relief were granted, there would be a risk that both the interests of the ESC and its administration and the interests of the staff of the ESC in general would be seriously harmed. In fact the staff of the ESC has, for nearly three years, been represented by a Staff Committee which has been able to deal only with matters in hand and has consequently been unable to contribute effectively to the smooth running of the service by providing a

proper channel for the expression of opinion by the staff or to carry out fully the other tasks conferred on it by Article 9 (3) of the Staff Regulations of Officials.

29 Since the applicants have not succeeded in establishing the urgency required under Article 83 (2) of the Rules of Procedure, it does not appear necessary to examine whether the factual and legal grounds they rely upon establish a prima facie case for granting the suspension applied for.

30 It follows from the foregoing that the application for interim measures must be dismissed.

On those grounds,

THE PRESIDENT OF THE FOURTH CHAMBER,

by way of interim decision,

after hearing the views of the Advocate General,

hereby orders as follows:

(1) The application for interim measures is dismissed;

(2) Costs are reserved.

Luxembourg, 15 March 1988.

J.-G. Giraud
Registrar

G. C. Rodríguez Iglesias
President of the Fourth Chamber