ORDER OF THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT
22 June 1987 *

In Case 23/87 R

Mareile Tziovas, née Aldinger, a member of the temporary staff of the European Parliament, residing in Luxembourg, represented by Vic Elvinger, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 6 rue Heine,

applicant,

v

European Parliament, represented by Francesco Pasetti-Bombardella, Jurisconsult, and by Manfred Peter, Head of Division, acting as Agents, 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 suspension of the operation of decisions of the Group of the European People's Party of June 1984, 10 July 1985, 17 June 1986 and 1 July 1986, whose effect would be to concentrate most of the services of that group in Brussels, and of the decisions of 16 July and 29 October 1986 concerning the transfer of the applicant to Brussels,

THE PRESIDENT OF THE FIRST CHAMBER

after hearing the Advocate General, Sir Gordon Slynn,

makes the following

* Language of the Case: French.

Order

1 By application received at the Court Registry on 28 January 1987, Mareile Tziovas, née Aldinger, a member of the temporary staff of the European Parliament, brought an action for the annulment of a decision adopted in June 1984 by the Group of the European People's Party (hereinafter referred to as 'the EPP Group') of the European Parliament, of a decision of 10 July 1985 taken by the Bureau of the EPP Group, and of decisions of 17 June and 1 July 1986 taken by the President of the EPP Group, whose effect would be to concentrate most of the services of that group in Brussels, of a decision of 16 July 1986 of the Secretary-General of the EPP Group notifying the abovementioned decisions to the applicant and fixing the date of her transfer from Luxembourg to Brussels as 1 July 1987, and of a decision of the President of the EPP Group of 29 October 1986 which, according to the applicant, rejected the complaint made by her against her transfer.

2 By a document received at the Court Registry on 4 June 1987, Mareile Tziovas applied for an interim order suspending the operation of the contested decisions.

3 The defendant submitted its written observations on 10 June 1987. The parties presented oral argument on 18 June 1987.

4 Under Article 185 of the EEC Treaty, actions brought before the Court of Justice do not have suspensory effect. The Court of Justice may, however, if it considers that the circumstances so require, order that application of the contested measure be suspended.

5 Pursuant to Article 83 (2) of the Rules of Procedure, applications for interim measures are to state the circumstances giving rise to urgency and the factual and legal grounds establishing a prima facie case for the interim measure applied for.

6 The European Parliament has submitted that the application for interim measures is inadmissible on a number of grounds.

7 It submits in the first place that the applicant's letter of 7 September 1986, following the notification from the Secretary-General of the EPP Group of 16 July 1986 stating that the applicant was to be transferred to Brussels on 1 July 1987, is

a request within the meaning of Article 90 (1) of the Staff Regulations of Officials of the European Communities, which are applicable to temporary staff, and not a complaint within the meaning of Article 90 (2) of those regulations. In the absence of a prior complaint, the main application and the application for interim measures are, in its view, inadmissible.

8 In that connection, it should be remembered that the Court has made it clear on numerous occasions that the admissibility of the main action must not, in principle, be considered in proceedings concerning applications for interim measures but must be deferred until the main application is analysed, in order not to prejudice the decision on the substance of the case. It is sufficient to establish, when a serious objection of inadmissibility is raised, the existence of certain factors establishing a prima facie case for the admissibility of the application.

9 The abovementioned letter of the applicant dated 7 September 1986 calls for a detailed analysis which cannot be carried out in proceedings for interim measures and it cannot be stated categorically, at the present stage, that the letter will not be held, in the main proceedings, to be a complaint. This finding is sufficient to establish a prima facie case for the admissibility of the main application and, therefore, the admissibility of the application for suspension of the operation of the decisions in question.

10 The European Parliament submits in the second place that the application is rendered inadmissible by the fact that the written procedure on the question of admissibility in the main action has been concluded and that the application for interim measures was registered at the Court after the applicant had submitted her observations.

11 It must be stated in reply to that submission that, as the Court held in its order of 11 April 1960 (Cases 3/58 R and others, *Barbara Erzbergbau AG* v *High Authority of the ECSC* [1960] ECR 221), in principle it is for an applicant to decide whether it is appropriate to lodge an application for the suspension of the operation of a decision and to decide at what stage of the procedure to lodge it. In this case, there is no manifest objection, having regard to the stage reached in the main proceedings, to examining the application for suspension of the operation of the decisions in question.

12 In the third place, the European Parliament denies that the matter is urgent, in so far as a litigant cannot be entitled to create false urgency by lodging an application for interim measures at a late stage. In this case, the date for the applicant's

transfer to Brussels was fixed as long ago as 16 July 1986 and was confirmed by a letter dated 29 October 1986 from the President of the EPP Group.

13 It must be stated in reply to that submission that urgency is not determined by the speed with which a measure is to be applied for and taken but by the extent to which a person may need to obtain the adoption of a measure which is necessary at the present time to avoid certain damage. The fact that the transfer decision was adopted several months ago does not exclude urgency, since the circumstances show that the urgency of the situation is merely increasing as time passes; procedural exigencies prevent the applicant from obtaining the requested measure in time by means of a judgment in the main action and as a result her interests are likely to be jeopardized. In this case, the transfer date is fixed as 1 July 1987 and the main action is not going to be heard in the near future. The urgency of the matter is therefore incontestable.

14 Moreover, it must be stated that the grounds on which the applicant seeks the annulment of the decisions in question in the main action, based in particular on the breach of the contract of employment which specifies Luxembourg as the place where the applicant's duties are to be performed, are not, at first sight, altogether without foundation.

15 As regards the justification for the interim measure sought, the applicant claims that if she were transferred before a decision was given on the substance of the case her rights would be irretrievably prejudiced; the transfer would entail a highly inconvenient move to Brussels for the applicant and her child who was born on 28 February 1987, whilst her husband would be kept in Luxembourg by virtue of his contract of employment, thus causing the splitting up of her young family. The applicant adds that she is at present on sick leave by order of her doctor until 3 July 1987 as a result of post-natal complications.

16 The European Parliament denies that alleged damage would be irreparable.

17 It must be stated that it is apparent from the circumstances of the case that, on the one hand, serious and irreparable damage would be caused to the applicant by the disruption which the transfer to Brussels would entail at the present time for her family relationships and her health. That disruption could not be wholly compensated for, if she won her case, by the award of damages. On the other

hand, from the explanations given at the hearing by the agent for the European Parliament, it does not appear that a decision suspending the transfer would be liable seriously to jeopardize the proper functioning of the EPP Group. Suspension of the operation of the measure is therefore justified in principle.

18 In order to avoid for the time being the damage which the applicant might suffer, however, it is not necessary to suspend the operation of all the decisions referred to in the application. It will suffice to suspend the operation of the decision to transfer the applicant from Luxembourg to Brussels on 1 July 1987, as contained in the letter of 16 July 1986 from the Secretary-General of the EPP Group and the letter of 29 October 1986 from the President of the EPP Group.

On those grounds,

THE PRESIDENT OF THE FIRST CHAMBER,

acting pursuant to Article 9 (4) and Article 96 of the Rules of Procedure,

by way of a temporary measure,

hereby orders:

(1) The operation of the decision contained in the letter of 16 July 1986 from the Secretary-General of the EPP Group and in the letter of 29 October 1986 from the President of the EPP Group ordering the transfer of the applicant to Brussels on 1 July 1987 is suspended;

(2) The costs are reserved.

Luxembourg, 22 June 1987.

P. Heim
Registrar

F. Schockweiler
President of the First Chamber