

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE  
11 March 1994

Case T-56/94 R

**Raffaele de Santis**  
**v**  
**Commission of the European Communities**

(Officials – Procedure for interim relief – Interim measures)

Full text in French . . . . . II - 267

**Application for:** Interim measures to suspend the procedure for filling the post of Head of Unit VI.D.1 'Milk products' of the Commission.

**Decision:** Application dismissed.

**Abstract of the Order**

The Commission published a vacancy notice for the post of Head of Unit VI.D.1 'Milk products'. The applicant, a Principal Administrator in Grade A 4 assigned to that unit, did not put his name forward as a candidate, by reason of the training in agronomy and agricultural economics demanded by the vacancy notice. He

brought an action for the annulment of the Commission's decision regarding the publication of the vacancy notice, in particular on the ground that, by demanding from candidates specific qualifications for the sole purpose of appointing a candidate chosen in advance, the Commission infringed Article 27 of the Staff Regulations of Officials and committed an abuse of procedure.

### **Application for suspension of the procedure to fill the contested post**

The President of the Court of First Instance points out that the urgency of an application for interim measures under Article 104(2) of the Rules of Procedure of the Court of First Instance must be assessed in relation to the necessity to prevent, by means of the interim measures sought and before a decision is given on the application in the main proceedings, serious and irreparable damage to the party which has asked for them. It is for that party to prove that it cannot wait for the outcome of the substantive proceedings without suffering damage that would entail serious and irreparable consequences (paragraph 15).

See: T-564/93 R *Hecq v Commission* [1994] ECR-SC II-1, para. 28

The President of the Court of First Instance observes that the application for interim measures merely specifies, as a circumstance establishing the urgent need for such measures, the fact that, applying the principles established by the Community judicature, the Court of First Instance might decide that the appointment made following an improper procedure for filling the post should not be annulled, thus effectively denying the applicant any reasonable chance of promotion to the post of Head of Division in Grade A 3 (paragraph 16).

The President of the Court of First Instance finds that that allegation is merely hypothetical, given that, as the proceedings now stand, there is nothing which could prevent the Community judicature from annulling any appointment made following the contested procedure for filling the post should it find that the main application is well founded. In any event, even if the Community judicature were to decide that an appointment made following the contested procedure should not be annulled,

such a decision would be based on the ground that the applicant's rights were adequately protected. It follows that there are no grounds for finding that there is a risk of serious and irreparable damage (paragraphs 17 and 18).

See: 144/82 *Detti v Court of Justice* [1983] ECR 2421, para. 33; C-242/90 P *Commission v Albani* [1993] ECR I-3839, para. 13

The President of the Court of First Instance further considers that the alleged damage cannot be regarded as serious and irreparable, in that the applicant is not entitled to rely on any right to promotion to a post of Head of Division in Grade A 3 which would be irreversibly affected by the contested procedure for filling the post (paragraph 19).

In the circumstances, the President of the Court of First Instance dismisses the application for interim measures and considers it unnecessary to examine whether the applicant's pleas in support of the main application are *prima facie* well founded.

#### Operative part:

The application for interim measures is dismissed.