

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
12 August 1998

Case T-42/98 R

Maria Paola Sabbatucci
v
European Parliament

(Application for interim measures – Amicable settlement – Binding nature –
Automatic removal from the register – Conditions)

Full text in Italian II - 1353

Full text in all languages in ECR-II

Application for: interim measures under Article 91(4) of the Staff Regulations of Officials of the European Communities and in accordance with Articles 185 and 186 of the EC Treaty.

Decision: Removal from the register.

Abstract of the Order

Elections to the Staff Committee of the Parliament were organised in January 1998. The applicant was a candidate in List No 5. The ballot papers were counted on 26 January 1998. In accordance with the rules applicable, the seats were allocated in proportion to the number of votes obtained by each list. Six seats were awarded to List No 5.

In a memorandum of 17 February 1998, the Committee of Tellers explained that awarding seats on the basis of the number of individual votes had not allowed the conditions laid down in subparagraphs (1) and (2) of the fifth paragraph of Rule 17 of the Rules governing representation of the Staff of the European Parliament Secretariat to be fulfilled. That paragraph provides:

‘Seats shall be awarded within each list to the candidates polling the greatest number of individual votes, subject to the following conditions:

- (1) the candidates elected shall include two representatives of each category of officials (including the Language Service) and two representatives of the other servants referred to in Rule 5;
- (2) the candidates elected shall include a number of members of staff assigned to Brussels established in accordance with the fourth paragraph of Rule 6.

An elected candidate may help to fulfil both of these conditions simultaneously.’

As a result of the selection effected by the Committee of Tellers between the candidates, with the aim of fulfilling the conditions laid down in that rule, Ms Wiik in List No 5 was declared elected in place of the applicant.

The applicant submitted a complaint to the Committee of Tellers challenging the election results communicated to the staff on 27 January 1998. In its reply of 17 February 1998, the Committee of Tellers dismissed that complaint.

By application of 9 March 1998, the applicant brought an action, under Article 91(4) of the Staff Regulations of Officials of the European Communities, for annulment of the decision of 27 January 1998 and the decision of 17 February 1998, in so far as she was excluded from the persons elected to the Staff Committee of the Parliament. On the same day, she also made an application for interim measures, seeking the suspension of the business of the Staff Committee, as constituted according to the communication of the Committee of Tellers of 27 January 1998, and of the reply of that committee of 17 February 1998 and the adoption of any measure judged appropriate in order to ensure the protection of the applicant's interests.

At the hearing on 8 May 1998, the parties agreed on an amicable settlement of the proceedings of which the Registrar took formal note. The minutes of the hearing relate the terms of that amicable settlement:

'There shall be a recount of the votes awarded to the applicant, to Ms Wiik (who replaced the applicant), to Ms Tassinari (in List No 6), and to the other candidates from Brussels who, having regard to their category, could – if the number of votes awarded to them had been higher – have replaced a candidate from Luxembourg (with the consequence that the applicant would not have been replaced by Ms Wiik).

The applicant agrees, if the result (according to the interpretation of the rules applicable to elections submitted by the European Parliament) is correct, to withdraw her application for interim relief.

The parties shall inform the Court of First Instance of the results within two weeks.'

The parties sent no observations about the text of those minutes.

In a fax of 14 May 1998 addressed to the applicant, the Parliament sent a list of 11 candidates 'whose individual votes [were] to be recounted'.

By letter of 2 June 1998, the applicant informed the Court of First Instance that it had not been possible to reach any agreement with the Parliament about the arrangements for a recount of the votes. In that regard, she emphasised the fact that the Parliament's proposal to limit the count to certain candidates was contrary to the agreement reached at the hearing of 8 May 1998.

Law

It results from the amicable settlement that the recount of the votes was to be effected only in so far as a candidate assigned to Brussels could have replaced, having regard to his category, an elected candidate assigned to Luxembourg, if he had obtained a higher number of votes than in the previous count. A recount of all the ballot papers was therefore never envisaged as a possible means of implementing the amicable settlement.

The Parliament's choice of 11 candidates, 10 of whom were assigned to Brussels, for whom the recount of votes was actually carried out, corresponded exactly to the letter and spirit of the amicable settlement. The result of the recount is not different from that obtained after the first count.

Since the Parliament respected the terms of the amicable settlement, the applicant should have withdrawn her application for interim measures.

The amicable settlement agreed by the parties before the judge hearing the application for interim measures is legally binding and, as such, must be enforced by him. Where, on expiry of the time-limit granted to the parties to inform the Court of the results of the implementation of the amicable settlement, the judge finds that the amicable settlement was correctly implemented, but that the applicant does not honour his undertaking to withdraw his application for interim measures in such a situation, he must of his own motion order that application to be removed from the register.

Where the application for interim measures is not withdrawn, even though the amicable settlement is properly implemented, the case must be automatically removed from the register.

Operative part:

Case T-42/98 R is removed from the register.