

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

In Case T-42/98 R,

**Maria Paola Sabbatucci**, an official at the European Parliament, residing in Luxembourg, represented by Alberto Dal Ferro and Andrea Cevese, of the Vicenza Bar, Chambers of Morresi Law Office, 67 Avenue des Nerviens, Brussels,

applicant,

v

**European Parliament**, represented by Antonio Caiola and Evelyn Waldherr, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

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,

\* Language of the case: Italian.  
ECR

THE PRESIDENT OF THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES

makes the following

**Order**

**Legislative background**

Article 9 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') provides:

'1. There shall be set up:

(a) within each institution:

— a Staff Committee, which may be organised in sections for the different places of employment;

...

2. The composition and procedure of the bodies shall be determined by each institution in accordance with the provisions of Annex II.

...'

2 The second paragraph of Article 1 of Annex II to the Staff Regulations states:

‘The conditions for election to the Staff Committee if it is not organised in local sections, or to the local section, if the Staff Committee is organised in local sections, shall be laid down by the general meeting of officials of the institution in service at the relevant place of employment. ...’

3 The fourth paragraph of the same article states:

‘Membership of the Staff Committee if it is not organised in local sections, or of the local section if the Staff Committee is organised in local sections shall be such as to ensure the representation of all categories of officials and of all services provided for in Article 5 of the Staff Regulations and also of the servants referred to in the first paragraph of Article 7 of the Conditions of employment of other servants of the Communities. The Central Committee of a Staff Committee organised in local sections shall be validly constituted upon appointment of a majority of its members.’

4 The fifth paragraph of Rule 17 of the Rules governing representation of the staff of the European Parliament Secretariat (‘the Rules governing representation of the Staff’) 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.'

5 The second and third sentences of the fourth paragraph of Rule 6 of those Rules state:

'... Acting on a proposal from the outgoing Committee of Tellers, the General Meeting shall confirm the number of seats on the Staff Committee to be reserved for members of staff assigned to Brussels. This number shall represent the proportion of officials and other servants of the Secretariat assigned to Brussels, rounded up to the nearest unit.'

6 The number of seats reserved for members of staff assigned to Brussels was fixed at 11 by the General Meeting of staff of September 1997.

### **Background to the dispute**

7 Elections to the Staff Committee of the Parliament were organised in November 1997. Since the legal quorum was not reached, a second ballot was held from 13 to 23 January 1998.

8 The applicant was a candidate in List No 5.

- 9 The ballot papers were counted on 26 January 1998. It is clear in particular from the minutes of that count that a request concerning the counting of a bundle of 50 ballot papers resulted in an immediate recount.
- 10 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 on that basis to List No 5.
- 11 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 to be fulfilled.
- 12 In particular, the condition laid down in subparagraph (1) could be satisfied only by selecting two representatives in Category D and one representative in Category OS ('Other Servants'). The Committee of Tellers looked therefore in all the lists for candidates in those two categories obtaining the greatest number of individual votes.
- 13 After that selection, there were still three too few persons assigned to Brussels to fulfil the conditions in subparagraph (2) of the fifth paragraph of Rule 17 of the Rules governing representation of the Staff.
- 14 According to the results communicated by the Committee of Tellers, the three candidates assigned to Brussels obtaining the greatest number of votes were Ms Järvinen-Pejcov (121 individual votes) in List No 5, who replaced an elected candidate in that list, Mr Hennart (118 individual votes) in List No 6, who

replaced an elected candidate in that list, and Ms Wiik (103 individual votes) in List No 5, who was declared elected in place of the applicant.

- 15 At the beginning of February 1998, within the 10 days laid down in the fifth paragraph of Rule 19 of the Rules governing representation of the Staff, the applicant, who had therefore not been declared elected to the Staff Committee, submitted a complaint to the Committee of Tellers challenging the election results communicated to the staff on 27 January 1998. She referred, in particular, to the 'paradoxical situation according to which ... the candidate polling the highest total number of votes is not elected'. In its reply of 17 February 1998, the Committee of Tellers stated that it could not act on the applicant's complaint.

## Procedure

- 16 By application lodged at the Registry of the Court of First Instance on 9 March 1998, the applicant brought an action, under Article 91(4) of the Staff Regulations, 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.

- 17 By separate document lodged at the Registry of the Court of First Instance on the same day, she also made an application, under Article 91(4) of the Staff Regulations and in accordance with Articles 185 and 186 of the EC Treaty, for interim measures. By that application she seeks, first, 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, secondly, the adoption of any measure judged appropriate in order to ensure the protection of the applicant's interests.

- 18 The Parliament submitted its written observations on the application for interim measures on 24 March 1998.
- 19 The oral submissions of the parties were heard on 8 May 1998. At that hearing, they agreed on an amicable settlement of the proceedings for interim relief of which the Registrar took formal note.
- 20 The minutes of the hearing, communicated to the parties by fax of 14 May 1998, 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.’

- 21 The parties sent no observations to the Registry of the Court of First Instance about the text of those minutes. On 15 May 1998, the applicant’s representative

applied, however, for the time-limit for organising the recount to be extended until 10 June 1998. That extension was granted by the President of the Court of First Instance.

- 22 Correspondence was exchanged between the parties in order to determine the arrangements for recounting the ballot papers. In a fax of 14 May 1998 addressed to the applicant, the Parliament's representative sent, 'in the light of the minutes of the Court of First Instance', a list of 11 candidates 'whose individual votes [were] to be recounted'.
- 23 By fax of 19 May 1998, the Parliament's representative confirmed that that partial recount of the votes could take place on 8 June 1998 'on condition that the terms of the agreement ... reached at the hearing of 8 May 1998 and ... taken down in the minutes of the Court of First Instance of 14 May ... be respected'. He stated further: 'A recount in respect of the candidates assigned to Brussels who have in any event obtained a seat and/or who could not have replaced a candidate in Luxembourg, meaning that the applicant would not have been replaced by Ms Wiik, is not provided for by that agreement.'
- 24 By letter of 2 June 1998, the applicant's representative informed the President of 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, he emphasised the fact that the Parliament's proposal to limit the count to certain candidates, whom it had already chosen 'according to a criterion [unknown] to the applicant', was 'contrary to the spirit and the letter of the agreement reached at the hearing of 8 May 1998 and recorded in the minutes of the hearing'. He concluded: 'In these circumstances, the applicant takes note of the fact that an agreement with [the Parliament], in accordance with what had been

decided at the hearing, has not been reached because of the conduct of the Parliament and she therefore defers to the determination of the President of the Court of First Instance.’

## Law

- 25 It is apparent from the correspondence exchanged after the hearing of 8 May 1998 that the applicant took the view that the terms of the amicable settlement did not rule out a recount of all the ballot papers.
- 26 However, it clearly results from the amicable settlement (paragraph 19 above) that the recount of the votes was to be effected by the Parliament 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. It is only on that condition that, under the rules applicable to elections, the applicant could have not been replaced by the candidate assigned to Brussels in the same electoral list, Ms Wiik. A recount of all the ballot papers was therefore never envisaged as a possible means of implementing the amicable settlement.
- 27 In that regard, 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. In order to comply with that settlement, the Parliament was to undertake a recount of the ballot papers of the candidates assigned to Brussels who might have obtained a higher number of votes than Ms Wiik and also to check that the number of votes awarded to

Ms Wiik was not lower than that according to the first count. In those circumstances, the allegation of lack of transparency in the choice of candidates made by the applicant's representative in his letter of 2 June 1998 cannot be upheld.

- 28 The count undertaken by the Parliament does not disclose any change in the number of votes awarded to the candidates assigned to Brussels who might have obtained a higher number of votes than Ms Wiik. Furthermore, the number of votes awarded to Ms Wiik remained the same as in the previous count. The result of the recount, undertaken to implement the amicable settlement and pursuant to the relevant applicable provisions, is therefore not different from that obtained after the first count.
- 29 It follows that the Parliament fully respected the terms of the amicable settlement and that, consequently, the applicant should have withdrawn her application for interim measures.
- 30 In that regard, where the minutes of the hearing in proceedings on an application for interim measures specify, as in this case, a time-limit within which the parties are required to inform the Court of the results of the implementation of the amicable settlement, it is for the judge hearing the application, upon the expiry of that time-limit, to order that the case be removed from the register if he finds that the parties agreed on the implementation of the amicable settlement and that they have accordingly abandoned any claim in connection with the proceedings. Where, on expiry of the time-limit granted to the parties, the judge finds that the amicable settlement was correctly implemented, but that the applicant does not honour the undertaking he had given 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. It is important to stress that 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.

31 In this case, the application for interim measures was not withdrawn, even though, as found above (paragraph 29), the defendant properly implemented the amicable settlement. The case must therefore be automatically removed from the register.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. Case T-42/98 R is removed from the register.
2. The costs are reserved.

Luxembourg, 12 August 1998.

H. Jung

Registrar

B. Vesterdorf

President