

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
23 November 1990 *

In Case T-45/90 R,

Alicia Speybrouck, a former member of the temporary staff of the Group of the European Right of the European Parliament, residing in Brussels, represented by Vic Elvinger, of the Luxembourg Bar, and, at the hearing of the application for interim measures, by Catherine Dessoy, of the Luxembourg Bar, with an address for service in Luxembourg at their Chambers, 4 rue Tony Neuman,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, and Manfred Peter, Head of Division in its Legal Department, acting as Agents, with an address for service in Luxembourg at the Secretariat of the European Parliament,

defendant,

APPLICATION for interim measures suspending the operation of the decisions of 31 May and 12 July 1990 adopted by the General Secretary and by the Chairman of the Group of the European Right respectively terminating the applicant's contract of employment,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

makes the following

* Language of the Case: French.

Order

Facts

- 1 By an application lodged at the Registry of the Court of First Instance on 16 October 1990, the applicant brought an action for the annulment of the decision of 31 May 1990 of Jean-Marc Brissaud, General Secretary of the Group of the European Right (hereinafter referred to as 'the Group'), informing the applicant of the termination of her contract of employment with effect from 30 June 1990, and the decision of 12 July 1990 of Jean-Marie Le Pen, Chairman of the Group, confirming to the applicant the termination of her contract of employment and informing her that the period of notice would expire on 11 October 1990.
- 2 By a separate document lodged at the Registry of the Court of First Instance on the same day, the applicant sought, pursuant to Article 186 of the EEC Treaty and Article 83 of the Court's Rules of Procedure, the suspension of the operation of the said decisions.
- 3 The European Parliament submitted its observations on 26 October 1990. The parties presented oral argument on 12 November 1990.
- 4 Before examining the merits of this application for interim relief, it is appropriate to give a brief account of the facts at the origin of the main proceedings.
- 5 The applicant was engaged as a member of the temporary staff in Grade A 3 by the European Parliament and assigned to the Group with effect from 1 January 1990 for an indefinite period. The contract of employment provided for a probationary period of six months and a period of notice of three months to be observed by each party in the event of its termination.

- 6 The report on the applicant's ability to perform her duties and her efficiency and conduct in the service as provided for in the third paragraph of the Conditions of Employment of Other Servants¹ (hereinafter referred to as 'the Conditions of Employment') was drawn up on 3 May 1990 and signed on 18 May 1990 by Mr Brissaud. The report contained the observation 'successful probationary period' and stated as general observation 'good ability' and 'good knowledge of the work of the European Parliament'.
- 7 By letter dated 31 May 1990 Mr Brissaud informed the applicant that 'in spite of the favourable probationary report . . . the Chairman of our Group, Mr Jean-Marie Le Pen, has decided not to employ you after the end of the probationary period . . . The period of notice of one month will begin on 1 June 1990'.
- 8 By letter dated 6 June 1990 the applicant lodged with Mr G. Van den Berge, the Director-General for Personnel, Budget and Finance of the Parliament, a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities against the dismissal decision sent to her.
- 9 By letters dated 18 and 25 June 1990 the applicant informed Mr Van den Berge and Mr Brissaud respectively that on 18 June she had lodged a medical certificate with the Parliament's Medical Officer certifying that she had been pregnant since about 15 May 1990. By letter dated 26 June 1990 Mr Brissaud informed the applicant that the Bureau of the Group had confirmed 'for serious reasons concerning her' the decision not to employ her after the end of the probationary period.
- 10 By letter dated 12 July 1990, Mr Le Pen, Chairman of the Group, confirmed to the applicant that in accordance with his instructions to the General Secretary, the Group had decided to terminate her contract. In view of the dispute regarding the date on which the contract should terminate, he specified, furthermore, that the period of notice would expire on 11 October 1990.

¹ — Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 (OJ, English Special Edition 1968 (I), p. 30), amended most recently by Council Regulation (Euratom, ECSC, EEC) No 2258/90 of 27 July 1990 (OJ 1990 L 204, p. 1).

- 11 By letter dated 24 July 1990 the applicant lodged with Mr Van den Berge a second complaint under Article 90(2) of the Staff Regulations against the decision contained in the letter of 12 July 1990 from the Chairman of the Group.
- 12 The applicant's complaint of 6 June 1990 was rejected by implied decision, since there was no reply to it during the four months after it was lodged. Since the period for reply to the complaint of 24 July 1990 has not yet expired, the proceedings in the principal action before the Court of First Instance are suspended, pursuant to Article 91(4) of the Staff Regulations, until such time as an express or implied decision rejecting the complaint is taken.

Law

- 13 According to Article 83(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* to the Court of First Instance by virtue of the third paragraph of Article 11 of the Council Decision establishing a Court of First Instance of the European Communities, the applicant must state the circumstances giving rise to urgency and the factual and legal grounds establishing a prima-facie case for the interim measure applied for.
- 14 As to urgency, the applicant states that she is unmarried and has received no remuneration since 11 October 1990. That situation is all the more critical since she is pregnant (she must therefore soon face not only the costs occasioned by her condition but also the costs relating to the maintenance and education of her child) and, in view of her pregnancy, is unable to find fresh employment.
- 15 As regards grounds establishing a prima-facie case for the interim measures applied for, the applicant alleges in the first place that the dismissal decision of 31 May 1990 has all the appearances of an unlawful act in that, apart from the fact that it was not notified by the competent appointing authority, it is contrary to the provisions of Article 14(3) and (4) of the Conditions of Employment and does not observe the period of three months' notice under the contract.

- 16 In the second place the applicant considers that the decision of 12 July 1990 is contrary to the general principles of law recognized by the international community and by the Member States in relation to employment law in so far as it was taken when the applicant was pregnant and the appointing authority was informed of her pregnancy. She states that the second decision is contrary to the provisions of Article 47(2) of the Conditions of Employment in relation to the calculation of the period of notice and vitiated by a procedural defect in that there was no consultation with the Staff Committee.
- 17 The Parliament contends that the application for interim measures should be dismissed. The condition of urgency is not satisfied in the present case since the applicant's problem is above all a financial one. If the applicant were successful in the main proceedings, her rights would be restored retroactively and in consequence she would receive the remuneration accumulated during the proceedings. She could thus ask for a bank loan to cover her needs until a decision is reached on the substance.
- 18 The Parliament states moreover that the applicant's chances of success in the main proceedings must be regarded as minimal in view in particular of the provisions of Article 47 of the Conditions of Employment in conjunction with Article 58 of the Staff Regulations according to which it is only during the period of maternity leave, which begins six weeks before the probable date of confinement, that the period of notice of dismissal may not begin to run and also the lack of any link between the applicant's pregnancy and the serious political reasons which led to the Group's dismissal of her.
- 19 At the hearing the Parliament's representative lodged a document entitled 'Summary Guide to Unemployment Benefit — Temporary Staff'. The rules set out in that document, which according to its own terms 'is purely for information purposes and does not legally bind the Commission', have been applied by the Parliament since 1989. The Parliament's representative also stated that the applicant had lodged an application for unemployment benefit with the Parliament on the same day as she had lodged her application for interim measures with the Court of First Instance. He added that he had been instructed by the Parliament that the documents relating to the grant of that benefit were ready.

The grounds put forward by the applicant as establishing a prima-facie case for the suspension of the operation of the contested decisions

- 20 It should be pointed out first of all, as regards the decision of 31 May 1990, that the arguments put forward by the applicant reveal factors which are prima facie capable of calling in question the lawfulness of the said decision. The decision of 12 July 1990, for its part, was adopted at a time when the appointing authority was aware of the applicant's pregnancy. The applicant's argument, based mainly on the general principles recognized in most Member States in relation to the protection of pregnant women from dismissal during pregnancy, is of a serious nature and cannot therefore be regarded as without relevance.
- 21 Without in any way prejudging the lawfulness or unlawfulness of the contested decisions, it must therefore be pointed out that the factual and legal grounds put forward by the applicant cannot be regarded as manifestly without foundation and thus do not in themselves allow the present application for interim measures to be rejected.
- 22 It is therefore necessary to determine whether maintenance of the contested decisions until the Court of First Instance has given judgment on the substance is likely to cause serious and irreparable damage to the applicant.

The condition of urgency and serious and irreparable damage

- 23 As the Court of Justice has held on several occasions (see most recently paragraph 4 of the Order in Case 141/84 R *De Compte v Parliament* [1984] ECR 2575), in principle, purely pecuniary damage cannot be regarded as irreparable or even as difficult to repair since *ex hypothesi* it may be the subject of subsequent financial compensation.
- 24 However, it is for the court hearing the application for interim measures to assess the factors which, in the particular circumstances of each case, are such as to establish whether immediate implementation of the decisions whose suspension is

sought is likely to expose the applicant to the risk of damage which cannot be repaired even if the decisions are subsequently annulled in the main proceedings.

25 Article 28a of the Conditions of Employment sets out the circumstances in which a former member of the temporary staff who is unemployed when his service with an institution of the Communities has been terminated will receive a monthly unemployment allowance for a maximum of 24 months from the date of termination of service. Article 28a(3) fixes the unemployment allowance at 60% of the basic salary for an initial period of 12 months, 45% of the basic salary from the 13th to the 18th month and 30% of the basic salary from the 19th to the 24th month. The amounts thus calculated may not be less than BFR 30 000 nor more than BFR 60 000.

26 Article 28a(5) of the Conditions of Employment provides that a former member of the temporary staff who is eligible for the unemployment allowance shall also be entitled to the family allowances provided for in Article 67 of the Staff Regulations and, as provided for in Article 72 of the Staff Regulations, to insurance cover against sickness without having to make any contribution.

27 It follows that, as from the date of her dismissal and for an initial period of 12 months, the applicant can claim a monthly unemployment allowance of BFR 60 000 as well as the insurance cover against sickness provided for in Article 72 of the Staff Regulations and, as from the birth of her child, a household allowance and dependent child allowance provided for in Article 1(1) and Article 2(1) respectively of Annex VII to the Staff Regulations.

28 Although there is a substantial difference between the salary corresponding to a post in Grade A 3 and the amount of the unemployment allowance which the applicant would be able to claim, that consideration alone does not lead to the conclusion that the applicant will suffer serious and irreparable damage. Pending a decision on the substance, the unemployment allowance and insurance cover against sickness, as well as the household allowance and dependent child allowance as from the birth of the child, will enable the applicant to meet her

expenses and in particular those occasioned by her condition and the approaching birth of her child.

- 29 In those circumstances the immediate operation of the decisions which are the subject of the application for interim measures will not be such as to involve irreversible damage which could not be made good even if the decisions were to be annulled.
- 30 The position would be different, in view of the applicant's condition, if she could not immediately obtain the various allowances which she can claim. In such a situation, even if the Court of First Instance were subsequently to uphold the application on the substance and thus re-establish the applicant's rights, her lack of means would in the circumstances of the case be such as to expose her to a serious risk which would be difficult to make good and accordingly would justify suspension of the operation of the contested decisions.
- 31 Although the applicant can claim the benefit of the unemployment allowance and the Parliament's representative stated at the hearing that the relevant documents are ready in so far as the Parliament is concerned, the information before the Court of First Instance does not allow it to establish with certainty whether all the conditions required for the applicant to obtain the unemployment allowance, as laid down in Regulation (ECSC, EEC, Euratom) No 91/88,² are already satisfied.
- 32 Article 28a(2) of the Conditions of Employment and Regulation No 91/88 provide that the formalities to be complied with by former members of the temporary staff include the requirements that a certificate be obtained from the competent employment authorities in the place of residence certifying that the applicant is registered as seeking employment and that he comply with the obligations and checks laid down by the legislation which the competent authorities in the place of residence apply. Furthermore, as is apparent in particular from Article 28a(6), it is the Commission, and not the institution in which the former member of the temporary staff was employed, which must pay the amounts corresponding to the unemployment allowance and family allowances after all the inquiries in the case are complete.

² — Commission Regulation of 13 January 1988 laying down provisions for implementing Article 28a(2) of the Conditions of Employment of Other Servants (OJ 1988 L 11, p. 31).

33 The possibility that satisfying such formalities may cause serious delays in the payment of the unemployment allowance cannot be disregarded.

34 Under Article 186 of the EEC Treaty in conjunction with Article 4 of the abovementioned Council Decision of 24 October 1988, the Court of First Instance may prescribe any necessary interim measures in cases pending before it.

35 In view of the foregoing considerations it should be held that so long as the unemployment allowance provided for in Article 28a of the Conditions of Employment is not actually paid to the applicant by the Commission, the conditions for the grant of an interim measure are satisfied.

36 It would however be disproportionate to suspend the operation of the contested decisions and in consequence order the Parliament to re-establish the applicant in her rights pending the decision on the substance of the case. The Court of First Instance must balance the respective interests of the parties to avoid on the one hand serious and irreparable damage to the applicant and on the other obliging the political group to maintain an employment relationship in a situation where one of the essential elements in any contract between a political group and its staff, namely mutual confidence, is lacking.

37 In the present case the risk of serious and irreparable damage can be avoided by ordering the Parliament to continue to pay the applicant her salary up to the amount of the unemployment allowance provided for in Article 28a of the Conditions of Employment together with, as from the birth of her child, the household allowance and dependant child allowance, and to provide for her, without any contribution on her part, the insurance cover against sickness as provided for in Article 72 of the Staff Regulations until the said unemployment allowance is actually paid to the applicant by the Commission.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE,

by way of interim decision,

hereby orders:

- (1) The application for interim measures to suspend the operation of the decisions of 31 May 1990 and 12 July 1990 in so far as they terminate the applicant's contract of employment with the Group of the European Right is dismissed.
- (2) From the date on which the contract of employment was terminated and until the Commission actually pays the applicant the unemployment allowance provided for in Article 28a of the Conditions of Employment, the Parliament shall pay the applicant a sum equivalent to the abovementioned unemployment allowance together with, as from the birth of her child, the family allowances referred to in Article 28a(5) of the Conditions of Employment and shall provide for the applicant, without contribution on her part, the insurance cover against sickness as provided for in Article 72 of the Staff Regulations.
- (3) The costs are reserved.

Luxembourg, 23 November 1990.

H. Jung
Registrar

J. L. Cruz Vilaça
President