

Case T-155/89 R

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Rita Buccarello and Others
v
European Parliament

Order of the President of the Court of First Instance, 15 December 1989 19

Summary of the Order

Application for interim measures — Interim measures — Conditions for granting — Serious and irreparable damage
(EEC Treaty, Art. 186; Rules of Procedure, Art. 83(2))

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
15 December 1989*

In Case T-155/89 R

Rita Buccarello, employee, of 12 rue Léon-Thys, Luxembourg,

Paula Ravacchioli, employee, of 141 rue de la Tour Jacob, Luxembourg,

Roberto Tiseni, employee, of 306 A route de Thionville, Luxembourg,

* Language of the case: French.

Roberto Galtieri, employee, of 27 rue Vergoth, Brussels,

Gina Fortino, employee, of 99 boulevard des Invalides, Brussels,

and

Luisa Parlavecchio, official, of 27 rue Vergoth, Brussels,

represented by Carlo Revoldini, of the Luxembourg Bar, with an address for service at his Chambers, 21 rue Aldringen, Luxembourg,

applicants,

v

European Parliament, represented by Francesco Pasetti Bombardella, jurisconsult of the European Parliament, and Manfred Peter, Head of Division in its Legal Department, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for interim measures suspending the procedure in Competition PE/104/C,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

makes the following

Order

- 1 By an application lodged at the Registry of the Court of First Instance on 10 November 1989, the applicants brought an action for the annulment of Open Competition PE/104/C, which was organized by the European Parliament following publication of a notice in Official Journal C 226 of 1 September 1988, p. 13, to establish a reserve list of Italian-language typists in the career bracket comprising Grades 5 and 4 of Category C.
- 2 By a separate document lodged at the Registry of the Court of First Instance on 14 November 1989 the applicants sought, pursuant to Article 186 of the EEC Treaty and Article 83 of the Court's Rules of Procedure, suspension of the procedure in Competition PE/104/C.
- 3 The European Parliament submitted its observations on 23 November 1989. The parties presented oral argument on 12 December 1989.
- 4 Before examining the merits of this application for interim relief, it is appropriate to give a brief account of the facts of the case.
- 5 The documents before the Court show that the practical tests and the oral test in the competition in question were held simultaneously in Luxembourg and Rome on 26 October 1989. The practical test was as follows: 'Layout and clean copy on an electric typewriter of a handwritten text in Italian. The typewritten text will be of about 45 lines. Time allowed: 30 minutes. The test will be marked out of 30. Candidates obtaining a mark lower than 15 will be eliminated.'
- 6 Section I ('Nature of Duties') of the notice of competition stated that the selected candidates would be required, in particular, to type in Italian and possibly in another official language of the European Community on various kinds of typewriter. One of the conditions for admission to the competition was at least two years' practical experience in a post involving duties corresponding to those described under heading I.

- 7 According to Article 83(2) of the Rules of Procedure of the Court of Justice, which is applicable *mutatis mutandis* to the Court of First Instance by virtue of the third paragraph of Article 11 of the Council Decision of 24 October 1988 (88/591/ECSC, EEC, Euratom, establishing a Court of First Instance of the European Communities, Official Journal L 319, 25.11.1988, p. 1, as amended in Official Journal L 241, 17.8.1989, p. 4), applicants 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.
- 8 The applicants claim, in the first place, that the European Parliament did not treat the candidates equally since the typewriters made available to them were of different models. The applicants also point out that, whereas during the tests in Rome the candidates were told by experts how to operate and use the typewriters, candidates in Luxembourg were not told how to operate the machines and were obliged to use instruction booklets written in Dutch and German, languages which some of the candidates did not know. The candidates fear that they will be eliminated on the basis of a typing test in which the principle of equal treatment was infringed and that they will therefore suffer irreparable damage. Consequently they believe that the legal conditions for the grant of interim measures have been met.
- 9 The European Parliament contends that the application for interim measures should be dismissed. It states that it is normal practice in all the institutions to provide candidates with typewriters of different makes and that it is impossible for administrative reasons and in view of the number of candidates to have available a reserve of identical machines during practical tests. Moreover, in the Parliament's opinion, it is not the make of the machine but the keyboard which is important and it emphasizes that, for that reason, the Selection Board in the competition ensured that all the candidates had available a typewriter with the keyboard they had requested in their application forms. It also points out that in Luxembourg any practical guidance which was necessary was given to the candidates by a member of the Selection Board and by an assistant from the 'Competition Unit' before the test began. The Parliament concludes from that that the factual and legal grounds relied on by the applicants do not establish a prima-facie case for the interim measure requested.

10 Moreover, in the European Parliament's opinion, the applicants have not suffered serious and irreparable damage since, even if the Selection Board in the competition completed its task and even if the candidates who had been placed on the reserve list were appointed, the applicants' rights could be restored to them by a judgment of the Court of First Instance granting their application on the substance of the case.

11 The Court of Justice has consistently held (see, in particular, the Order in Case 171/89 R *González Holguera v Parliament* [1989] ECR 1705) that an application to suspend the operation of any measure adopted by the institutions will only be granted if there is an urgent need for the measures, in the sense that it must be necessary that they be adopted and come into effect before judgment is delivered on the substance of the case in order to avoid serious and irreparable damage to the party seeking their adoption.

12 Even if in the course of the tests at issue there was an infringement of the principle of equal treatment as between the candidates, it must be pointed out that the applicants have not shown how continuing the competition would cause them irreparable damage. The competition which the applicants seek to have annulled is intended to establish a reserve list of Italian typists. That list would be valid until 31 December 1991 and may be extended. If the Selection Board in the competition completes its task before the Court of First Instance delivers its judgment on the substance of the case and if some of the candidates on the reserve list are appointed in the meantime, any annulment of the test at issue would render those measures invalid. In such a case, it would be for the European Parliament, pursuant to Article 176 of the EEC Treaty, to take the necessary measures to comply with the judgment of the Court of First Instance.

13 It follows that if the application is held to be well founded, the applicants will recover their rights and no circumstances justifying the adoption of urgent measures have therefore been established.

14 In view of the foregoing considerations, it must be stated that the conditions for the grant of the interim measure sought have not been met and that therefore the application must be dismissed.

On those grounds,

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

by way of interim decision,

makes the following

Order

- (1) The application for interim measures is dismissed.**
- (2) The costs are reserved.**

Luxembourg, 15 December 1989.

H. Jung
Registrar

J. L. da Cruz Vilaça
President