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ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ  
 TRIBUNAL GENERAL DE LA UNIÓN EUROPEA  
 TRIBUNÁL EVROPSKÉ UNIE  
 DEN EUROPÆISKE UNIONS RET  
 GERICHT DER EUROPÄISCHEN UNION  
 EUROOPA LIIDU ÜLDKOHUS  
 ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
 GENERAL COURT OF THE EUROPEAN UNION  
 TRIBUNAL DE L'UNION EUROPÉENNE  
 CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH  
 OPĆI SUD EUROPSKE UNIJE  
 TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA  
 EUROPOS SĄJUNGOS BENDRASIS TEISMAS  
 AZ EURÓPAI UNIÓ TÖRVÉNYSZÉKE  
 IL-QORTI ĠENERALI TAL-UNJONI EWROPEA  
 GERECHT VAN DE EUROPESE UNIE  
 SĄD UNII EUROPEJSKIEJ  
 TRIBUNAL GERAL DA UNIÃO EUROPEIA  
 TRIBUNALUL UNIUNII EUROPENE  
 VŠEOBECNÝ SÚD EURÓPSKEJ ÚNIE  
 SPLOŠNO SODIŠČE EVROPSKE UNIJE  
 EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN  
 EUROPEISKA UNIONENS TRIBUNAL

## ORDER OF THE JUDGE HEARING APPLICATION FOR INTERIM MEASURES

- 960532 -

4 September 2020 \*

(Application for Interim relief — Interim proceedings — Article 157(2) of the Rules of Procedure)

In Case T-550/20 R,

**Eleanor Sharpston**, residing in Schoenfels (Luxembourg), represented by N. Forwood, Barrister, and J. Flynn QC,

applicant,

v

**Council of the European Union,**

**Representatives of the Governments of the Member States,**

defendants,

APPLICATION pursuant to Articles 278 and 279 TFEU for the grant of interim measures, seeking the partial suspension of operation of the Decision of the Representatives of the Governments of the Member States of 2 September 2020 appointing three judges and one Advocate-General to the Court of Justice,

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exercising the functions of the President, in accordance with Article 157(4) in conjunction with Article 12 of the Rules of Procedure,

makes the following

\* Language of the case: English.

## Order

- 1 Pursuant to Articles 278 and 279 TFEU and Article 157(2) of the Rules of Procedure of the General Court, by application received at the Registry of the General Court of the European Union on 4 September 2020, Eleanor Sharpston ('the applicant') requests that:
  - the operation of the Decision of the Representatives of the Governments of the Member States to appoint three judges and an advocate-general to the Court of Justice taken on 2 September 2020 ('the Decision') in so far as it purports to appoint Mr. Athanasios Rantos to the position of Advocate-General at the Court of Justice of the European Union, be suspended until the determination of the application in Case T-550/20 *Eleanor Sharpston v Council of the European Union and the Representatives of the Governments of the Member States* or further order;
  - the effects of the Decision be stayed in so far as it affects the expiry of the contracts of employment, or the secondment, of the applicant's collaborators as appear in Annex A.3 to the application for interim measures;
  - the aforesaid interim measures be granted before 7 September 2020 or as soon as possible thereafter.
- 2 Since the President and the Vice-President of the General Court are prevented from acting in the matter of this application, pursuant to Articles 12 and 157(4) of the Rules of Procedure Judge Anthony M. Collins, President of the Third Chamber, has been charged with exercising the functions of the President.
- 3 In 2006, on the nomination of the government of the United Kingdom of Great Britain and Northern Ireland, the Representatives of the Governments of the Member States appointed the applicant to the Court of Justice to serve as an advocate-general for a term of six years. Upon re-nomination by the same government, Decision (EU, Euratom) 2015/578 of the Representatives of the Governments of the Member States of 1 April 2015 appointing Judges and Advocates-General to the Court of Justice (OJ 2015 L 96, p. 1) appointed the applicant to serve as advocate-general for the period from 7 October 2015 to 6 October 2021. She has served and continues to serve in that post.
- 4 Council Decision 2013/336/EU of 25 June 2013 increasing the number of Advocates-General at the Court of Justice of the European Union (OJ 2013 L 179, p. 92) fixes the number of advocates-general at the Court of Justice as eleven with effect from 7 October 2015. As of the date of the making of this order each of these eleven posts are occupied.
- 5 Annex A.1 to the application for interim measures consists of a copy of a press release purportedly issued by the Council of the European Union on 2 September 2020. It states that, on the said date, the representatives of the government of the

Member States appointed three judges and an advocate-general to the Court of Justice.

- 6 The said press release further represents that Mr. Rantos was appointed advocate-general to the Court of Justice from 7 September 2020 to 6 October 2021 following the withdrawal of the United Kingdom from the European Union.
- 7 The applicant contends that the appointment of Mr. Rantos is based upon the thesis that, following the withdrawal of the United Kingdom from the European Union, one of the eleven posts of advocate-general at the Court of Justice has become vacant. Since the government of the United Kingdom of Great Britain and Northern Ireland nominated her to the post of advocate-general, and the justification advanced for Mr. Rantos' appointment is the withdrawal of the United Kingdom from the European Union, she apprehends that the appointment of Mr. Rantos will determine her mandate as an advocate-general as of 7 September 2020, thus prior to 6 October 2021.
- 8 In accordance with settled case-law, Article 157(2) of the Rules of Procedure of the General Court permits the judge hearing an application for interim measures to adopt an interim measure where such a measure appears necessary to enable that judge to obtain sufficient information so as to be in a position to give a ruling on a complex situation of fact and/or law raised by the application for interim measures, or where it appears necessary, in the interests of the proper administration of justice, that the status quo be maintained until an order concluding the interim measures proceedings has been made (see, to that effect, orders of 20 July 1988, *Commission v Italy*, 194/88 R, EU:C:1988:417, paragraph 3; of 28 June 1990, *Commission v Germany*, C-195/90 R, EU:C:1990:271, paragraph 20; and of 2 April 1993, *CCE Vittel and CE Pierval v Commission*, T-12/93 R, EU:T:1993:35, paragraph 33).
- 9 This application for interim measures clearly satisfies both of these requirements.
- 10 One part of the application alleges, *in fine*, that the appointment of Mr. Rantos by the Representatives of the Governments of the Member States constitutes an unwarranted and unjustifiable interference with the autonomy and independence of the Court of Justice as provided under the treaties establishing the European Union. It further pleads that the Decision is subversive of the independence and autonomy of the judicial branch of government of the European Union and that it usurps powers that the treaties establishing the European Union attribute to the Court of Justice exclusively.
- 11 Another part of the application asserts that the Decision is grounded upon an erroneous interpretation of Article 50(3) TEU, which provision has not had the benefit of authoritative interpretation by the Court of Justice.
- 12 Both of these issues raise complex issues of law that, at a very minimum, require detailed and comprehensive argument before the judge hearing the application for interim measures before the application for interim measures can be ruled.

- 13 As for the criterion of the proper administration of justice, the negative consequences of replacing a lawfully appointed office holder by someone whom may ultimately be deemed to have been appointed unlawfully, are self-evident. Such a scenario is not in the interests of the applicant nor in those of her possible successor. Nor, since such a result would generate challenges as to the composition of the Court of Justice, thereby impugning the validity of its judgments, is it in the interests of the application of the rule of law in the European Union not to accede to this application.

On those grounds,

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hereby orders:

- 1. The operation, and all consequential effects, of the Decision of the Representatives of the Governments of the Member States of 2 September 2020 appointing three judges and one Advocate-General to the Court of Justice, in so far as it purports to appoint Mr. Athanasios Rantos to the position of Advocate-General at the Court of Justice of the European Union, are suspended until the order terminating the present proceedings for interim relief is made.**
- 2. The costs are reserved.**

Luxembourg, 4 September 2020.

E. Coulon

A. M. Collins

Registrar

Judge hearing application for interim measures