JUDGMENT OF THE COURT (FIRST CHAMBER)
29 SEPTEMBER 1983 [1]

Hilde de Bruyn
v European Parliament

(Probationary official — Dismissal)

Case 223/82

Officials — Recruitment — Probationary period — Dismissal
(Staff Regulations of Officials, Art. 34 (2))

In Case 223/82

HILDE DE BRUYN, a former probationary official of the European Parliament, of 32 Rue Jean l'Aveugle, Luxembourg, represented by Victor Biel of the Luxembourg Bar, 18 A Rue des Glacis, with an address for service at the latter's Chambers,

applicant,

v

EUROPEAN PARLIAMENT, represented by Martin Schmidt, Director of Personnel and Social Affairs, acting as Agent, assisted by Alex Bonn of the Luxembourg Bar, 22 Côte d'Eich, with an address for service at the latter's Chambers,

defendant,

APPLICATION primarily for the annulment of the applicant's report made at the expiry of the probationary period and of her dismissal, and for damages,

1 — Language of the Case: French.

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, Lord Mackenzie Stuart and T. Koopmans, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows.

I — Facts and written procedure

As a result of her seccessful participation in Competition No PE/58/LA for the recruitment of Dutch-language translators, Miss de Bruyn was appointed a probationary official of the European Parliament in Grade LA 7 with effect from 1 March 1981.

It should be noted that on her application form the address which she had indicated as being at s-Gravenwezel (Netherlands) was deleted, and that under the heading "postal address", a space which had previously been filled by the word "geen" (none), the following address appeared: "Mantineias — 2-4 Vironas — Athens".

On Friday 3 April 1981 the applicant left her place of work, saying that she was feeling unwell. In her application, she disclosed that she had obtained official sick leave because a surgical operation had been arranged to take place in Athens since the previous April. However she acknowledges that, being unfamiliar with the provisions of the Staff Regulations, she left for Greece without special authorization. The Parliament disputes that interpretation of the facts.

On 10 April 1981 the defendant received a medical certificate dated 6 April, signed by a doctor in Athens, which stated that the applicant would be unfit for work for a period of 10 days. A second certificate, dated 17 April, extended the sick leave for a further

10 days. Miss de Bruyn returned to work on 28 April 1981.

On 2 June 1981 a memorandum signed by the applicant's head of division and two revisers was sent to the Director of Translation and Terminology and communicated to Miss de Bruyn. It stated that she should take more care to observe the rules of the administration and that she should get to know the terminology more quickly, but that her knowledge of modern Greek was good. It was also stated that a well-informed assessment of the applicant could not be given because of her long absence on grounds of illness.

On 7 September 1981 Miss de Bruyn received a note from her Head of Division informing her that the results of her probationary period were, at that stage, unsatisfactory, and that consequently her probationary report might be unfavourable. Following that note, the applicant was seen by her Head of Division.

On 28 October 1981 the applicant's probationary report was signed. It included the comments "satisfactory" for speed of execution, relations within the service and relations with those outside the service, and "unsatisfactory" for the knowledge necessary for the work in question, for judgment and ability to adapt, initiative, ability to organize, sense of responsibility and devotion to her work, quality of work and punctuality. A supplementary memorandum specified the following complaints in respect of the applicant:

"Lack of insight and general culture resulting in a failure to understand the texts properly.

Careless and nonchalant conduct: on several occasions her thoughtlessness almost upset the smooth running of the service.

Lack of initiative and dedication to her work: she has not managed to acquire an adequate understanding of how the institutions work or of the most elementary concepts and terms used in the Parliament; in addition she is slow in her work.

Failure to work hard enough and poor punctuality.

Lack of order in her work."

The report recommended that the applicant be dismissed.

On 11 December 1981 Miss de Bruyn submitted her observations on that report, and requested an extension of her probationary period on the ground that her absences because of sickness had prevented her from being able to demonstrate her professional abilities to the full.

On 9 February 1982 the applicant was notified of the decision to dismiss her as from 28 February. On 17 February she lodged a complaint against the probationary report and the resulting dismissal. The complaint was supplemented by a memorandum from the applicant dated 26 May 1982, in which she alleged that there was a close causal connection between her dismissal and the recruitment of Mr Vermeulen. Both the complaint and the memorandum were rejected by letter of the Secretary-General of the Parliament of 16 July 1982.

This action was brought before the Court on 23 August 1982.

The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

"(a) Declare the application admissible;

(b) Declare it well founded and, accordingly, declare that the report made at the expiry of Miss de Bruyn's probationary period, which recommended her dismissal, should be annulled;

(c) Hence, declare the dismissal null and void;

(d) Declare that the applicant is therefore entitled to her salary, emoluments and allowances from the date of her dismissal (28 February 1982) until settlement by the defendant, with interest at 10% until final payment;

(e) Order the defendant to pay the applicant, by way of non-material damages, either BFR 10 000 per month of unemployment from the date of this application, with interest at 10%, or a lump sum of BFR 180 000 with interest at 10% from the date of this application until final payment;

(f) Permit the applicant to call witnesses to prove that the contested probationary report amounts to a misuse of powers and that its unavowed objective was to vacate the applicant's post;

(g) Order the defendant to pay all the costs, or, if an inquiry is held, reserve the costs."

The *defendant* contends that the Court should:

"Take note that the Parliament leaves the question of the admissibility of the application to be decided by the Court;

Declare the application ill-founded and dismiss it;

Rule as to costs in accordance with the relevant provisions of the Staff Regulations."

III — Submissions and arguments of the parties

The *applicant's* first submission is based on the obligation to respect good faith: in her view the assessor failed to appraise objectively the factors he is required to consider under Article 34 of the Staff Regulations. A statement of grounds cannot refer to such personal factors as "lack of order", "nonchalance", and "thoughtlessness". As regards the lack of "general culture", that requires proof in the case of someone who is a graduate in linguistics. A second submission based on the failure to state separate grounds in respect of the different items is joined to the first.

It is claimed that the duty of assistance, or "Fürsorgepflicht", was not respected inasmuch as the only person who gave assistance to the applicant throughout her probationary period, Mrs Kroon, a reviser, was not consulted and inasmuch as her superiors did not give help to the applicant.

Further it is alleged that the probationary report was established prematurely, that is to say two months and nine days before the end of the probationary period.

The applicant claims that the assessor lacked the proper authority inasmuch as it was for the relevant director to establish the report. On 21 September 1981 there was no Director of the

Translation and Terminology Directorate but that in no way justifies a delegation of authority in respect of probationary reports to Mr Van Mulders, the Head of Division.

Under the heading breach of the principle of the protection of legitimate expectation, the applicant points out that she complied with the request that she get to know the terminology more quickly, but that she did not, however, realize the threat which that remark posed to her future. The three signatories to the memorandum of 2 June 1981 testified to her good knowledge of modern Greek, but also noted that her lengthy absence on grounds of sickness prevented them from giving a well-informed assessment of her. That provisional memorandum was drawn up when she had been working for only 53 days. In the course of her interview with the Head of Division, it was never suggested that her probationary report might be wholly unfavourable, yet 12 days later the report recommending her dismissal was drawn up. Throughout the entire period of her probation the applicant never received any written or oral observation which might have led her to believe that such a decision was imminent.

Finally the applicant alleges misuse of powers inasmuch as a wealth of relevant and corroborative circumstantial evidence leads her to believe that the probationary report was drawn up in such terms for reasons unrelated to the proper functioning of the service. The haste with which the report was drawn up before the expiry of the normal period indicates that the administration was in a hurry to "dispose of" the applicant in order to be able to offer her post to Mr Vermeulen, a successful candidate in a later competition.

In addition to the annulment of the report and of the decision of dismissal, the applicant requests that her salary for the "months of unemployment" be paid to her with interest at 10% as from each date on which her salary fell due. The report caused her considerable non-material harm. It was the source of continual and exhausting anxiety and it caused her to incur costs in seeking new employment.

The *Parliament* contends in its defence that the submission that the probationary report was premature is not supported by the facts. The second part of the report, "Assessment", was filled in and dated on 28 October 1981, one month before the end of the applicant's probationary period. Only the administrative part was completed on 21 September 1981. Moreover, the Staff Regulations prescribe only the latest date; they contain no provision concerning the earliest date at which the report may be established. To the best of the defendant's knowledge, the Court has never had to consider a complaint based on the allegation that a report is premature and there is, moreover, no support for such an objection in the relevant provisions.

As regards the question whether the assessor had the requisite authority, the Parliament contends that the report in question was signed by the Deputy Director General, Mr Palmer, on the recommendation of the relevant Head of Division, Mr Van Mulders. It was accompanied by a memorandum for the attention of Mr Palmer, signed by the Head of Division and countersigned by a linguistic adviser and a reviser. The report was therefore drawn up by those who were best placed to assess the

applicant's work. In addition, it was signed by the Director General. Those are the facts. Moreover, in the defendant's opinion it should be pointed out that the Staff Regulations do not establish who has authority to draw up and sign, as assessor, the probationary report referred to in Article 34 (2) of the Staff Regulations.

As regards the claim that the statement of grounds is inadequate, the defendant replies that a résumé in two or three words should in principle be sufficient to satisfy the requirement of a supplementary statement of grounds when the comment is "unsatisfactory". Therefore, the report in question cannot be challenged on procedural grounds. Essentially, the action calls into question the merits of the assessor's observations with a view to having those observations reviewed not only by the appointing authority but also by the Court. However, it is well established that the latter merely ascertains the legality of the contested report as regards both procedure, with particular emphasis on the rights of the defence, and the statement of grounds. In reality, the applicant disputes certain charges which have been levelled at her and attempts to refute them. For example in respect of the comment "unsatisfactory" under the heading "knowledge necessary for work", she maintains that she achieved good results in a competition and that to say now that she lacks the knowledge necessary for the post amounts to a repudiation of the decision of the selection board. Thus the applicant's argument is based on the proposition that any candidate in a competition who is placed on the list of suitable candidates has, by virtue of that fact, proved his competence and ability. The question might therefore be asked why provision is made in the Staff Regulations for a compulsory probationary period for all officials. Moreover, it is well known that if success in a competition or tests may demonstrate the theoretical abilities of a candidate, only the probationary period can establish his practical abilities.

The applicant 's attitude may therefore be summarized as follows: she objects to the assessments of her work as unsatisfactory by claiming that such assessments are ill founded; she disputes the opinion of her superiors; she cites her studies, her knowledge, the level of her education, her success in previous employment and, above all, in a competition organized by the institution; she maintains that the assessments cannot be supported; she repudiates and consequently attacks the report. Such detailed argument as to the substance of criticisms which are contained in a probationary report is entirely out of place in proceedings before the Court.

The submissions relating to breach of the principle of good faith and the failure to state separate grounds in respect of the different items amount to the same argument. As regards the duty to assist, the Parliament replies that in addition to the purely oral warnings the applicant received on 2 June 1981, when three months of her probationary period had elapsed, a copy of a written note in which her superior and two other revisers, including Mrs Kroon, drew her attention to points in respect of which she was advised to make a particular effort. Moreover, her revised translations were returned to her and should have shown her that her work was unsatisfactory. In addition she was admonished on several occasions for her conduct in the service.

That should also remove any question concerning breach of the principle of the protection of legitimate expectation. In

reality, it is the Parliament's expectations of the applicant which were deceived.

As regards misuse of powers, the Parliament maintains that the post occupied by Miss de Bruyn and that to which Mr Vermeulen was appointed are different. They were filled following two different competitions. The applicant participated in Competition No PE/58/LA for which the maximum age was thirty-five and the duties to be fulfilled were defined as follows: "Translation into Dutch from at least two other official languages" and so on. In the second competition, No PE/67/LA, in which Mr Vermeulen participated, the duties were described as follows: "Translation into Dutch from modern Greek and one of the official languages . . ." The maximum age was raised to forty in view of the difficulty of finding candidates with a knowledge of Greek.

The Parliament maintains that the claim for damages is inadmissible inasmuch as the action before the Court concerns an application for annulment. Even if such a claim was admissible it is ill founded, since the applicant obtains full satisfaction if the Court finds in her favour and she has sustained no further damage. To hold otherwise would be to prevent the institution from acting in accordance with Article 34 (2) of the Staff Regulations.

In her reply, the *applicant* observes in respect of misuse of powers that the Dutch division no longer needed her because a translator with considerable experience in Greek was going to be available. The appointment of Mr Vermeulen on 5 October 1981 coincided very opportunely with the unfavourable report given to the applicant, who was therefore doomed to be dismissed. It is not disputed that the latter was selected because of her knowledge of Greek, although knowledge of that language was not a requirement in the competition in which she took part. For Mr Vermeulen's post, modern Greek was a condition *sine qua non*. It is therefore clear that after the second competition, in which Mr Vermeulen participated, the applicant was no longer needed in her division.

In its rejoinder, the *Parliament* points out that the applicant was not recruited specially for her knowledge of Greek, since according to the notice of competition knowledge of Greek was merely an element to be taken into consideration. In April 1981, at the beginning of the applicant's probationary period, there were four vacant posts in the Dutch Translation Division, and at the end of her probationary period three of those posts were still vacant. Those last three posts were not filled until 1982 following Competition No PE/69/LA, the results of which were established in March 1982. The applicant's theory that she had to be dismissed in order to offer a post to Mr Vermeulen cannot be accepted in the light of those facts and dates.

IV — Oral procedure

The parties presented oral argument at the sitting on 30 June 1983.

The Advocate General presented his opinion at the end of that sitting.

Decision

1 By application lodged at the Court Registry on 23 August 1982 Miss de Bruyn, a probationary official of the European Parliament, brought an action for the annulment of her probationary report and of the decision dismissing her on the basis of that report, for an order that she is entitled, accordingly, to her salary, emoluments and allowances from the date of her dismissal, 28 February 1982, and for the payment of damages for the non-material harm which she has suffered.

2 As a result of Open Competition No PE/58/LA for the recruitment of Dutch-language translators to the Directorate-General of Sessional and General Services and by decision of the Secretary-General of the European Parliament of 30 March 1981, Miss de Bruyn was appointed a probationary official in Grade LA 7 with effect from 1 March 1981. In accordance with the provisions of Article 34 (1) of the Staff Regulations of Officials, she was required to complete a probationary period of nine months extending from 1 March to 30 November 1981.

3 An unfavourable probationary report dated 28 October 1981 was transmitted to the applicant, who signed it on 4 November 1981. At the same time she referred to comments which she intended to submit at a later date. In those comments, dated 11 December 1981, the applicant refuted the complaints which were directed against her and requested an extension of her probationary period on the ground that she had been absent (on sick leave) and had thus been unable to demonstrate her professional abilities to the full.

4 The Secretary-General of the Parliament informed the applicant on 9 February 1982 by registered letter of his decision to dismiss her with effect from 28 February 1982 as a result of her unfavourable probationary report recommending dismissal.

5 The applicant's representative submitted a complaint against the probationary report and the applicant's resulting dismissal, a complaint which was supplemented by letter of 26 May 1982.

6 The complaint was dismissed by letter of 16 July 1982 from the Secretary-General of the Parliament.

7 In the probationary report the comment "unsatisfactory" was entered under the following seven headings: (a) Knowledge necessary for the work, (b) judgment and ability to adapt, (c) initiative, (d) ability to organize, (e) sense of responsibility and devotion to work, (f) quality of work and (g) punctuality. That assessment was supported by a memorandum drawn up by Mr Van Mulders, Head of the Dutch Translation Division, and signed by Mr Haarsma, a linguistic adviser, and Mr Van Heel, a reviser, to record their agreement. The memorandum included the following passage:

"The complaints which we have in respect of this person may be summarized as follows:

Lack of insight and general culture resulting in a failure to understand texts properly.

Careless and nonchalant conduct: on several occasions her thoughtlessness almost upset the smooth running of the division.

Lack of initiative and dedication to her work: she has not managed to acquire an adequate understanding of how the institutions work or of the most elementary concepts and terms used in the Parliament: in addition she is slow in her work.

Failure to work hard enough and poor punctuality.

Lack of order in her work."

8 The report, which was dated 28 October 1981, was signed by Mr Palmer, for the Director-General.

9 The applicant raises various objections in respect of the report. It was premature, inasmuch as it was drawn up on 21 September 1981, that is to say more than two months before the end of the probationary period. It stated, wrongly, that the applicant had completed two years of higher education, instead of the four years which she had actually completed. The statement of grounds for the assessment of various aspects of her work as "unsatisfactory" did not sufficiently clarify the way in which the applicant failed to fulfil her duties. There was a contradiction inasmuch as under the heading "efficiency", her "speed of execution" was stated to be satisfactory, whilst in

the explanatory note the complaint was made that the applicant was "slow in her work". Mrs Kroon, a reviser, was not consulted; and the report was not signed by the director with authority to do so.

10 The applicant claims in addition that the defendant failed to fulfil its duty to assist her and frustrated the legitimate expectation which the applicant was entitled to have of the administration. Throughout the entire probationary period she received no written or oral observation which could have led her to believe that a decision dismissing her was imminent.

11 Finally, the applicant claims that the defendant took the decision to dismiss her in order to facilitate the recruitment of another specified translator as an official. There was therefore a misuse of powers.

12 It appears that the report is composed of two parts. The first part, which includes information which has no bearing on the probationary period, was filled in by the Personnel Division on 21 September 1981. That part contains the error concerning the length of time spent by the applicant in higher education. Although that part of the report does indeed contain an error it does not appear that the error had any significant bearing on the assessment of the applicant's abilities which represents the main part of the report.

13 The main part of the report was drawn up at the end of October 1981 and is dated 28 October.

14 It follows that the two objections relating to the date on which the report was drawn up and the error concerning the length of time spent in higher education must be disregarded.

15 As regards the statement of grounds in the report, it is true that a single explanatory note covers the seven headings under which the heading "unsatisfactory" was entered. However, it includes precise assessments of the applicant's abilities and constitutes an adequate statement of grounds which cannot be regarded as being insufficient.

16 The defendant does not deny that there may be a contradiction between the comment "satisfactory" concerning speed of execution and the observation that she was "slow in her work". It seems nevertheless that the latter observation refers to the applicant's conduct, and more specifically to her lack of dedication to her work, rather than to her capacity to carry out her work with the required speed. In any event even if that criticism must be disregarded other, sufficiently precise criticisms still justify her dismissal.

17 As far as the alleged failure to consult Mrs Kroon is concerned, it is enough to observe that systematic consultation of all the revisers is not obligatory and that it was for the Head of Division to decide which revisers were in the best position to assess the applicant's work during her probationary period.

18 As regards the complaint concerning the authority of Mr Van Mulders to sign the report, it seems that the internal rules of the Parliament do not specify which official must draw up the report. It appears that the established practice of the Parliament is for the report to be prepared by the director of the relevant directorate. At the material time there was no Director of the Translation and Terminology Directorate in the Parliament, and consequently the report was prepared by the Head of Division to which the applicant belonged. It was signed by the Director-General and recommended that the official be dismissed. That objection must therefore be disregarded.

19 As to the objection concerning the defendant's duty to assist and the alleged breach of the principle of the protection of legitimate expectation, it appears from the file that the applicant was warned on 2 June 1981 that her work was not satisfactory, and later, on 7 September 1981, that her progress was inadequate and that an unfavourable probationary report which would lead to her dismissal might be drawn up. Consequently, the institution cannot be accused of having failed to fulfil its duty in that respect.

20 As regards the alleged misuse of powers, finally, the applicant has failed to produce the slightest evidence in support of that submission. The person

alluded to was appointed an official on 5 October 1981, that is to say, more than four months before the applicant's dismissal, and he was appointed to another post.

21 In view of those considerations, the various submissions advanced by the applicant must be rejected. The application must therefore be dismissed.

Costs

22 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities institutions shall bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders each party to bear its own costs.**

O'Keeffe Mackenzie Stuart Koopmanns

Delivered in open court in Luxembourg on 29 September 1983.

J. A. Pompe
Deputy Registrar

A. O'Keeffe
President of the First Chamber