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

Chryssanti Papageorgopoulos v Economic and Social Committee

(Probationary official — Dismissal)

Case 277/82

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

In Case 277/82

CHRYSSANTI PAPAGEORGOPOULOS, formerly a probationary official of the Economic and Social Committee, residing at 215 E Venizelou, Iliopoulis, Athens, represented by Victor Biel of the Luxembourg Bar, 18 A Rue des Glacis, and with an address for service at his Chambers,

applicant,

v

ECONOMIC AND SOCIAL COMMITTEE, represented by Marius Simond, acting as Agent, assisted by Yvette Hamilius of the Luxembourg Bar, 11 Boulevard Royal, with an address for service at her Chambers,

defendant,

APPLICATION principally for the annulment of the applicant's report at the end of her 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, G. Bosco and T. Koopmans, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts

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

I — Facts and written procedure

As a result of her success in an open competition for the recruitment of typists held in December 1980, Mrs Papageorgopoulos was engaged on 1 July 1981 by the Economic and Social Committee as a probationary official (having been a member of the temporary staff during the month of June).

The applicant came from Canada where she had lived since she was 14 and had worked for eight years, latterly for the Ministry of Defence. In addition to her knowledge of her mother tongue, Greek, she apparently had very good knowledge of English and French.

On 30 November 1981 the report at the end of her probationary period was communicated to the applicant. The report mentioned as "insufficient" use of skills in carrying out duties, ability to express herself in writing in her mother tongue (Greek), versatility, and quality and execution of work, and as "very good" understanding of, and ability to express herself orally in, French and English. In the column headed "Comments" reference was made to the general assessment which ran as follows:

"Although Mrs Papageorgopoulos' professional and technical skills may be considered to be satisfactory, there are serious deficiencies in her knowledge of her mother tongue (Greek) as a result of which her work is definitely inadequate as regards both quality and performance. Moreover, the observations which were put to her on that subject revealed that she had the greatest difficulty in accepting the authority of her superiors, in working as a member of a team and thus in adapting herself to the working methods of the institution."

The report concluded that the applicant was not capable of carrying out the duties required by her post, having regard to her ability, her efficiency and her conduct in the service.

On 4 December 1981 the applicant intimated that she did not accept the report because she felt that it had been written in a subjective manner.

The report was signed by Mr Vermeylen, Head of Division, by Mr Farenzena, head of the typing pool, by Mrs de Oliveira, acting head of the pool, who had replaced Mr Farenzena during the latter's sick leave, and by Mrs Pallis, head of the Greek pool. In her observations on the report, the applicant included a letter written to Mr Farenzena by Mrs Amarantidou on the subject of the latter's assessments of various members of the Greek pool. Mrs Amarantidou had been acting head of the Greek pool prior to Mrs Pallis until 17 August 1981.

Following the report at the end of her probationary period, the applicant was dismissed by a decision of 21 December 1981 which took effect on 31 December 1981.

On 18 March 1982 the applicant submitted to the appointing authority a complaint asking for the revocation of the decision to dismiss her; the complaint was dismissed by letter from the Secretary General of the Economic and Social Committee on 16 July 1982.

After her dismissal the applicant obtained temporary employment as a typist (for one year) in Athens at the United Nations (in the so-called "Environment programme") from 1 October 1982. She also succeeded in the written tests for Greek typists at the European Parliament for whom the oral test was to be held on 10 December 1982.

The present action was lodged at the Court on 15 October 1982.

The written procedure follows the normal course.

On hearing the report of the Judge Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to hear certain witnesses. The hearing of those witnesses, Mr Farenzena and Mrs Pallis, took place on 21 April 1983. During the hearing Mrs Pallis gave evidence on the applicant's performance of her duties, her knowledge of written Greek and the quality of her typing. In addition to the questions put to Mrs Pallis, Mr Farenzena was asked to give information on any complaints made by the translation department relating to the applicant's typing.

II — Conclusions of the parties

The *applicant* claims that the Court should:

(a) Declare her application admissible;

(b) Declare that the application is well founded and therefore that the report made on the expiry of her probationary period recommending her dismissal must be annulled;

(c) Consequently, declare that the dismissal is unjustified and must be annulled;

(d) Declare in consequence that the applicant is entitled to her salary and emoluments from 1 January 1982 until payment is made by the defendant, plus interest at the rate of 10% per annum until the time of such payment;

(e) Order the defendant to pay the applicant BFR 10 000 per month plus

interest at the rate of 10% per annum by way of compensation for non-material damage for the period of her unemployment;

(f) Allow the applicant to produce witnesses to show that the disputed report at the end of her probationary period constituted a misuse of powers; and

(g) Order the defendant to pay the costs;

Alternatively, should there be an inquiry, reserve costs.

The *defendant* contends that the Court should:

(a) Principally, dismiss the application as unfounded;

(b) Order the applicant to pay the costs;

(c) In the alternative, in the event that the application is declared to be well founded, reject the applicant's claim for payment of salary and emoluments from 1 January 1982 until payment by the Economic and Social Committee;

(d) Reject likewise the applicant's claim for compensation for non-material damage;

(e) In that case rule on costs in accordance with the law;

(f) Reserve to the Economic and Social Committee all other rights, claims and actions.

In her reply the *applicant* asked in the alternative that the Court hear Mr Farenzena and Mrs Pallis as witnesses on the circumstances in which the report at the end of the probationary period was drawn up and, in the case of Mrs Pallis, on the conflict of interest between her and the applicant and more particularly on the question of who had sufficient knowledge of the matter to be able to assess the applicant's ability in written Greek.

III — Submissions and arguments of the parties

The *applicant* submitted, first, that the report at the end of the probationary period contained an inadequate statement of grounds inasmuch as the assessments of "insufficient" were not accompanied by any explanation; that amounted to absence of reasons, on which ground the report and the consequent dismissal must be completely and entirely annulled.

According to the applicant, there was misuse of powers in that Mrs Pallis, the principal reporting officer, was able to rid herself of a competitor since they were both candidates for the post of head of the Greek pool.

The report lacked objectivity in particular in that it contained a discrepancy between the assessment of the applicant's capacity to work in a team, which was judged to be satisfactory, and her "greatest difficulty . . . in working as part of a team" according to the general assessment in the report. There was therefore a contradiction in terms, which must be sufficient to dispose of the whole matter.

The applicant put forward two other submissions based on breach of the principle of legitimate expectation and of the duty to provide assistance.

Finally, the applicant stated that the report was void inasmuch as entries had not been made under three headings: the main duties carried out during the probationary period, the applicant's grade and step and the heading to be filled out by the hierarchical superior.

The applicant added that she did not claim compensation for material damage since it appeared to her certain that the defendant would have to pay her salary from her dismissal until the date of judgment. Since the wrongful dismissal caused her serious non-material damage, however, she insisted upon receiving an award under that heading, provisionally estimated at BFR 10 000 for each month during which she was unlawfully unemployed.

In reality, the applicant's central complaint was precisely the fact that the only reporting officer for her report at the end of the probationary period who knew Greek was Mrs Pallis, who was appointed head of the Greek pool in September 1981. The other reporting officers, Mr Farenzena and Mrs de Oliveira, had no knowledge of Greek, a fact which sufficed to render the report void. On that point the applicant added that Mrs Amarantidou, who was acting head of the Greek pool until 17 August 1981, wrote of her in a letter to Mr Farenzena: "excellent professional motivation, almost perfect typist, makes an effort to develop and advance, a calm, methodical and stable character, indispensable".

The *Economic and Social Committee* disputed the truth of the applicant's allegations regarding Mrs Pallis, who was put in charge of the Greek section of the typing pool because she had achieved first place in secretarial competition No CES C/21/79 and had extensive experience as an executive secretary as well as Community experience, having carried out the duties of a temporary administrative assistant in Grade B 5 in the Chambers of the Greek judge at the Court of Justice. In the course of her duties she had observed the applicant's work during the greater part of her period of probation. Finally, at no time were the applicant and Mrs Pallis possible competitors for the same post, given, in particular, that Mrs Pallis was over the age-limit to take part in the competition for a principal secretary (CES C/28/80) which was designed to select the head of the Greek pool. Moreover, Mrs Papageorgopoulos had failed that competition as well as the secretarial tests in the same combined competition and Mrs Pallis, in her capacity as secretary, had followed a completely different career from that of the applicant as a typist.

The fact that certain details had not been entered in the periodical report was irrelevant, since it was a report relating to a probationary typist whose tasks could not differ from the duties and powers attaching to her post. If, moreover, the disputed report did not contain observations from the various hierarchical superiors, it was because the latter by adding their signatures were simply endorsing the entirety of the report, to the drafting of which they had in any case contributed.

Although the applicant had sufficient professional and technical skills and her oral Greek was good, inasmuch as she was able both to speak and understand it, difficulties arose when she had to type it and in particular when she was required to transcribe texts dictated on tapes, where she should have been able to demonstrate that she had the necessary linguistic and grammatical

knowledge: translators who were consulted confirmed her inadequacies in that regard. Many remarks had been made to the applicant by her hierarchical superiors concerning the inadequacies of her work and the errors which appeared in written texts.

As to the last mention of "insufficient", regarding the applicant's versatility, the difference between that and the "satisfactory" mention regarding her ability to work in a team derived from the fact that whilst the applicant behaved correctly towards her colleagues in the Greek pool, she had difficulty in adapting herself to the work which was given to her and in particular in accepting the authority of her superiors.

The defendant considered that a formal defect in a periodical report did not require the annulment of the report since administrative law made a distinction between essential and subsidiary procedural requirements and only infringements of the former could entail annulment of the disputed measure.

Misuse of powers only existed, it was submitted, when an administrative authority performed an act within its powers but for a purpose other than that for which the act might lawfully be performed: in that respect the defendant found it difficult to see where and by what decision it could have been guilty of any sort of misuse of power, the presence of which must not be presumed and the burden of proof of which lay with the applicant.

As for illegality relating to the grounds for the report at the end of the probationary period and the decision of dismissal, the defendant has provided a detailed analysis for probationary officials of all the facts relevant to a final assessment of their ability to carry out the duties required by their posts and to judge their efficiency and conduct in the service. The disputed report, which included an extensive general assessment, was communicated to the applicant, who could submit — and in fact did — her observations in writing. On that point, the Economic and Social Committee stated that the applicant based her comments essentially on the letter from Mrs Amarantidou to Mr Farenzena, a letter which was of a purely one-sided nature. With regard to the letter of dismissal, that contained an exhaustive statement of the reasons on which it was based.

The applicant had combined an application for annulment with an application for amendment, but the waiver of compensation for material damage was not consistent with the claim for salary from 1 January 1982 to the date of judgment. In that respect, the defendant pointed out that the applicant had received two months' salary following her dismissal and that she had found new employment. It was therefore for her, having waived her claim for compensation for material damage, to prove that she had in fact suffered such damage as well as non-material damage.

IV — Oral procedure

The parties presented oral argument at the sitting on 19 May 1983.

The Advocate General delivered his opinion at the sitting on 14 July 1983.

Decision

1 By an application lodged at the Court Registry on 15 October 1982 Mrs Papageorgopoulos, a probationary official of the Economic and Social Committee, brought an action for the annulment of the report at the end of her probationary period and of the decision to dismiss her adopted on the basis thereof, and also for payment by the defendant of her salary and emoluments from 1 January 1982 together with damages and interest thereon in compensation for non-material injury.

2 As a result of an open competition for the recruitment of typists, the applicant was engaged by the defendant on 1 July 1981 as a probationary official.

3 The report at the end of the probationary period was drawn up on 27 November 1981 and communicated to the applicant on 30 November. The mention "insufficient" appeared under the heading "Ability" with regard to use of skills in carrying out duties — ability to express herself in writing, and for versatility, and under the heading "Efficiency" for quality and execution of work. Under the heading "General assessment" the following reasons were given for the "insufficient" ratings:

"Although Mrs Papageorgopoulos' professional and technical skills may be considered to be satisfactory, there are serious deficiencies in her knowledge of her mother tongue (Greek) as a result of which her work is definitely inadequate as regards both quality and performance.

Moreover, the observations which were put to her on that subject revealed that she had the greatest difficulty in accepting the authority of her superiors, in working as a member of a team and thus in adapting herself to the working methods of the institution."

4 The report concluded with a negative assessment regarding the ability of the applicant to carry out her duties, having regard to her ability, her efficiency and her conduct in the service.

5 The report was drawn up by Mr Vermeylen, Head of Division, and was signed by Mr Farenzena, head of the typing pool, Mrs de Oliveira, acting head of the pool, and Mrs Pallis, head of the Greek pool.

6 By a memorandum of 4 December 1981 the applicant disputed the report.

7 By decision of the Secretary General of the Economic and Social Committee of 21 December 1981, notified to the applicant on 22 December, she was dismissed with effect from 31 December 1981.

8 On 18 March 1982 the applicant submitted a complaint against the decision to dismiss her. The complaint was rejected by decision of the Secretary General of the Economic and Social Committee dated 15 July 1982.

9 In her application, Mrs Papageorgopoulos alleges that there is an inadequate statement of the grounds for the report, a lack of objectivity and an implicit inconsistency, breach of the principle of legitimate expectation and of the duty to provide assistance, and finally misuse of powers inasmuch as Mrs Pallis, who signed the report, did so in order to rid herself of a competitor for the post of head of the Greek pool.

10 In support of those submissions the applicant maintains that Mrs Pallis was her competitor for the post of head of the Greek pool and that consequently her assessment was not objective. She also maintains that Mrs Amarantidou, who was in charge of the pool for at least half of the probationary period, ought to have been consulted.

11 It appears from the file that Mrs Pallis was temporarily placed in charge of the Greek section of the typing pool by decision of 25 September 1981 with effect from 1 October and that when the report was drafted she was responsible for the section. It is sound administrative practice for the

person in charge of the relevant section to give her assessment of the ability of a probationary official. As for the applicant's complaint that Mrs Amarantidou's opinion had not been sought, it appears that the latter, a member of the temporary staff, had never been the subject of a written decision placing her in charge of the Greek section of the typing pool, but that she had been asked to coordinate the work of the Greek pool under the supervision of the head of the typing pool. Mrs Amarantidou was only able to observe the applicant's work from 1 July to 17 August, after which she went on leave. Mrs Amarantidou left the employment of the Economic and Social Committee on 27 August, even before the report was drawn up. Her opinion was therefore not required.

12 The report was compiled by the Head of Division and countersigned by the head of the typing pool, by Mrs de Oliveira, who was acting head of pool during the absence of her superior, and by the person in charge of the Greek pool, indicating their agreement with the assessment contained in the report. There is a sufficient statement of the grounds for the negative assessments in the general assessment, to which reference is made. The report was, therefore, properly drawn up and reasoned.

13 With regard to misuse of powers the applicant has not offered the slightest evidence in support of her allegation and it must therefore be set aside.

14 As to the applicant's other complaints, she has merely set them out in the application whilst reserving the right to elaborate upon them in her reply if necessary. No further clarification or elaboration of those complaints was presented during the later stages of the procedure. It is therefore not necessary to examine them.

Costs

15 Pursuant to Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. However, Article 70 of the Rules of Procedure provides that, in proceedings brought by officials of the Communities, the institutions shall bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby rules:

1. **The application is dismissed;**

2. **The parties shall pay their own costs.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 29 September 1983.

J. A. Pompe
Deputy Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 14 JULY 1983 [1]

Mr President,
Members of the Court,

1. The application of 15 October 1982 by which this action was brought comprises a series of allegations by Chryssanti Papageorgopoulos against the Economic and Social Committee, by which she was formerly employed, directed towards obtaining the annulment of the report made at the expiry of her probationary period and of her dismissal on the basis of that report, as well as payment of her remuneration from the time when her service ended and of a sum in compensation for non-material damage.

1 — Translated from the Italian.