JUDGMENT OF THE COURT (First Chamber)

20 May 2010 *

In Case C-583/08 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 22 December 2008,

Christos Gogos, official of the European Commission, residing in Waterloo (Belgium), represented by N. Korogiannakis and P. Katsimani, dikigoroi,

appellant,

the other party to the proceedings being:

European Commission, represented by J. Currall, acting as Agent, assisted by P.I. Anestis, dikigoros, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Greek.

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits, A. Borg Barthet (Rapporteur), J.-J. Kasel and M. Safjan, Judges,

Advocate General: J. Kokott,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 January 2010,

after hearing the Opinion of the Advocate General at the sitting on 4 March 2010

gives the following

Judgment

1 By his appeal, Mr Gogos seeks to have set aside the judgment of the Court of First Instance (now 'the General Court') in Case T-66/04 *Gogos* v *Commission* [2008] ECR-SC I-A-2-69 and II-A-2-451 ('the judgment under appeal') by which that court dismissed his action for annulment of the decision of the Commission of the European

Communities classifying him in grade A 7, step 3, ('the classification decision') and of the decision of 24 November 2003, rejecting the complaint he lodged with the appointing authority against the classification decision ('the decision on the complaint').

Legal context

2 Article 31 of the Staff Regulations of Officials of the European Communities in the version applicable at the time of the events giving rise to this dispute ('the Staff Regulations') provides:

'1. Candidates … shall be appointed as follows:

— officials in Category A …: to the starting grade of their category …

2. However, the appointing authority may make exceptions to the foregoing provisions within the following limits:

…

(b) in respect of other grades [than grades A 1, A 2, A 3 and LA 3],

— up to one third of the appointments to posts becoming vacant;

— up to half the appointments to newly created posts.

…'

3 The first and second paragraphs of Article 32 of the Staff Regulations provide:

'An official shall be recruited at the first step in his grade.

However, the appointing authority may, taking account of the training and special experience for the post of the person concerned, allow additional seniority in his grade; this shall not exceed 72 months in grades A 1 to A 4, LA 3 and LA 4 and 48 months in other grades.'

4 Article 45(2) of the Staff Regulations provides:

'An official may be transferred from one service to another or promoted from one category to another only on the basis of a competition.'

5 Under the first paragraph of Article 46 of the Staff Regulations:

'An official appointed to a higher grade shall, in his new grade, have the seniority corresponding to the notional step equal to or next above the notional step reached in his former grade, plus the amount of the two-yearly increment for his new grade.'

6 Article 91(1) of the Staff Regulations reads as follows:

'The Court of Justice of the European Communities shall have jurisdiction in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.'

Background to the dispute

7 The facts which gave rise to the dispute are set out as follows in the judgment under appeal:

'4 Christos Gogos, who had been in the service of the European Communities since 1981, was recruited by the Commission on 1 October 1986 as an official in Category B, grade 5, step 1.

5 In 1997 the applicant took part in internal competition COM/A/17/96 for promotion from Category B to Category A, for posts in career bracket A 7/A 6. Under the heading "Conditions for admission to the competition" it was stated that officials and members of the temporary staff who were classified in one of the grades of Category B and who had at least seven years' seniority in that category were eligible to enter the competition. Under the heading "Conditions of recruitment" it was stated that appointments would generally be to the starting grade of the career bracket.

6 By letter of 15 December 1997, the chairman of the selection board for that competition informed the applicant of the decision not to include him on the list of suitable candidates because his mark in the oral test was 24 out of 50 whereas the pass mark was 25.

7 In the action brought by the applicant in Case T-95/98 *Gogos* v *Commission* [2000] ECR-SC I-A-51 and II-219, the Court of First Instance annulled that decision of the selection board, inter alia on the ground that [the board] had not been able to guarantee the equal treatment of all the candidates during the oral tests of the competition in question.

8 Accordingly, the Commission called the applicant to another oral test on 25 September 2000. As the applicant failed that test he brought another action before the Court of First Instance, registered as Case T-97/01. Following an amicable settlement between the parties, the Commission undertook to extend, by way of exception and for the sole benefit of the applicant, the selection procedure in competition COM/A/17/96 (see order of the Court of First Instance of 21 October 2002 in Case T-97/01, not published in the ECR). The applicant then took a third oral test on 8 November 2002.

9 By letter of 15 November 2002, the Commission informed the applicant that he had passed that test and that his name had been placed on the list of suitable candidates from competition COM/A/17/96.

10 The applicant was then appointed an official as of 1 April 2003 and assigned to the Directorate General for Regional Policy, that is to say, the one for which he had worked since his recruitment as an official in Category B in 1986.

11 On 31 March 2003, the applicant was informed of the decision of … the appointing authority to classify him in grade A 7, step 3, as of 1 April 2003 …

12 In accordance with Article 90(2) of the Staff Regulations, on 30 June 2003 the applicant lodged a complaint against the [classification] decision. In support of his complaint, he pleaded breach of Articles 31 and 45 of the Staff Regulations, of Article 233 EC, of the principle of equal treatment and of the amicable settlement reached between the parties in Case T-97/01. He argued that his success in the competition in question should be deemed to date from his first oral test, that is to say, from 15 December 1997, since the competition had been reopened for his benefit. Finally, he submitted that, in view of his relevant professional experience for the profile which it was fairly difficult to fit, he should have been classified in grade A 6 as of 1 January 2002, given that the first promotions to grade A 6 of

successful candidates in internal competition COM/A/17/96 had already taken place on 1 January 2001 and most of them had attained that grade by 2003.

13 That complaint was rejected by a decision of the appointing authority of 24 November 2003 … According to that decision, Article 31(2) of the Staff Regulations does not apply because it only concerns new officials. It cannot, therefore, be applied to the applicant as he was already an official in Category B. In any event, there was nothing exceptional on his file for the purposes of the five criteria used to classify all officials on entry into service, namely, university profile, the length and quality of professional experience, the relevance of professional experience to the post occupied and the special value of a professional profile on the employment market. The appointing authority took the view, rather, that the applicant's grade and step had been correctly calculated in accordance with Article 46 of the Staff Regulations.'

Procedure before the General Court and the judgment under appeal

8 By application lodged at the Registry of the General Court on 8 February 2004, Mr Gogos sought the annulment of the classification decision and the decision taken on the complaint and an order that the Commission pay the costs or, in the alternative, that each party pay its own costs.

9 In support of his application the applicant relied on a principal plea of breach of Article 31(2) of the Staff Regulations. He also submitted that, by refusing him the benefit of that provision, the appointing authority also, as a result, breached Article 233 EC and the principles of equal treatment, equity, sound administration and the right to reasonable career prospects.

10 The General Court first observed, in paragraph 30 of the judgment under appeal, that, although a literal interpretation of Article 45(2) and Article 31(1) and (2) of the Staff Regulations does not prevent an official from being appointed to the higher grade in a career bracket, under Article 31(2), where he passes an internal competition for promotion to a higher category, the structure and purpose of those provisions preclude it. The General Court concluded, in paragraph 35 of that judgment, that that provision does not apply to the situation of the applicant.

11 The General Court went on to hold, in paragraph 36 of the judgment under appeal, that, even if that provision were applicable in the present case, it would not entail a right on the part of the applicant to be classified in grade A 6. The General Court rules, in paragraph 41 of that judgment, that the Commission has a wide discretion in the framework set by Article 31 of the Staff Regulations, both to assess whether the post to be filled calls for the recruitment of a specially qualified official or whether that official has exceptional qualifications and to consider the consequences of such assessments. The General Court inferred from this, in paragraph 42 of the judgment, that it cannot substitute its assessment for the assessment of the appointing authority and must therefore confine itself to verifying that there has been no infringement of essential procedural requirements, that the appointing authority has not based its decision on incorrect or incomplete material facts and that the decision is not vitiated by misuse of powers, an error of law or an inadequate statement of grounds.

12 The General Court, having noted that the applicant had put forward nothing to indicate that such was the case, concluded, in paragraph 44 of the judgment under appeal, that the irregularities which the applicant claims the Commission was guilty of in the management of his recruitment, whether it be the breach of Article 233 EC or that of the principles of equal treatment, equity, sound administration and the right to reasonable career prospects, are not liable to have an effect on the legality as such of the classification decision contested by the applicant.

13 The General Court went on to hold, in paragraph 45 of the judgment under appeal, that since the exceptional nature of a newly-recruited official's qualifications cannot be assessed in the abstract, but must be assessed in the light of the post for which he was recruited, it is casuistic in nature, which precludes the applicant from relying on a breach of the principle of equal treatment.

14 Finally, in paragraph 47 of the judgment under appeal, the General Court held that, although the organisation of another oral test for the applicant may have resulted in a delay in his promotion to Category A and in the point in time at which he acquired the minimum two years' seniority in grade A 7 required for promotion to grade A 6 under Article 45 of the Staff Regulations, possibly depriving him of a chance to be recruited in Category A at an earlier point in time and to be taken into consideration in subsequent promotion exercises, the applicant did not put an application for financial compensation for that loss before the General Court.

15 Having found that the Commission's conduct, which had required the holding of three oral tests for the applicant, had helped to bring about the dispute, the General Court ordered the Commission to bear its own costs and those of the applicant pursuant to Article 87(3) of its Rules of Procedure.

Forms of order sought

16 The appellant claims that the Court of Justice should:

— set aside the judgment under appeal;

— annul the classification decision and the decision on the complaint;

— exercise its unlimited jurisdiction and award him the sum of EUR 538 121.79 by way of compensation for the financial loss resulting from the unlawful conduct of the Commission in adopting the classification decision, which, because of the reform of the Staff Regulations, will affect the appellant for the rest of his life;

— award him EUR 50 000 by way of compensation for the length of taken by the Court of First Instance to deliver its judgment;

— order the Commission to pay the costs incurred in the proceedings at first instance and the appeal.

17 The Commission claims that the Court should dismiss both the appeal and the appellant's claim for damages based on the undue length of the proceedings and that it should order the appellant to pay the costs.

Appeal

18 In support of his appeal, the appellant relies on two pleas, the first alleging that the judgment under appeal failed to state reasons and the second, that the General Court made an error in failing to exercise its unlimited jurisdiction in order to award him of its own motion compensation to make good the damage to his career. He also seeks compensation for the undue length of the proceedings before the General Court.

The first plea

Arguments of the parties

19 By its first plea, the appellant submits that the General Court failed to examine five of the six pleas in support of annulment he relied on before that Court and did not state adequate reasons for dismissing his action against both the classification decision and the decision on the complaint.

20 In particular, he submits that the General Court dismissed, without stating grounds and on the basis of entirely arbitrary reasoning, the pleas alleging breach of Article 233 EC, of the principle of equal treatment, of the principle of equity, of the principle of sound administration and of the principle of the right to reasonable career prospects.

21 The appellant argues further that the General Court was obliged to examine the plea of breach of the principle of equal treatment independently, without that examination being subject to verification of the conditions set out in Article 31(2) of the Staff Regulations.

22 The Commission contends that this plea is inadmissible. It argues that, at first instance, Mr Gogos raised only one plea in support of annulment, alleging only breach of Article 31(2) of the Staff Regulations and the other provisions and principles were only relied on as ancillary arguments. By endeavouring, in the appeal, to transform those ancillary arguments into independent pleas in favour of annulment, the appellant was in fact raising new pleas.

Findings of the Court

– Admissibility

23 As a preliminary point, it must be observed that, as is apparent from the provisions of the first subparagraph of Article 42(2) read in conjunction with Article 118 of the Rules of Procedure of the Court, no new pleas in law may be put forward on appeal.

24 However, as the Advocate General observed in point 33 of her opinion, the purpose of those provisions is merely to ensure that the subject-matter of the proceedings is not changed in the appeal (see, to that effect, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraphs 57 to 59; Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others* v *Commission* [2005] ECR I-5425, paragraph 165; Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraph 66; and Case C-202/07 P *France Télécom* v *Commission* [2009] ECR I-2369, paragraph 60).

25 In the present case, as the Advocate General observed in point 34 of her opinion, Mr Gogos clearly devoted a substantial part of his application to the General Court to Article 233 EC and the principles of equal treatment, equity, sound administration and the right to reasonable career prospects.

26 In his appeal, he submits that the judgment under appeal did not take sufficient account of the essential parts of the argument he expounded at first instance and calls on the Court of Justice to verify whether the General Court examined the information

put before it in a manner consonant with the judicial requirements imposed on the reasons stated for a judgment.

27 Accordingly, it must be held that the first plea in law of the appeal did not have the effect of putting before the Court a case of wider ambit than was argued before the General Court.

28 That plea must, therefore, be held to be admissible.

– Merits

29 It must be observed that the plea that the General Court failed to rule on a plea relied on at first instance amounts essentially to relying on a breach of the obligation to state reasons which derives from Article 36 of the Statute of the Court of Justice of the European Union, applicable to the General Court of the European Union by virtue of the first paragraph of Article 53 of that Statute, and from Article 81 of the Rules of Procedure of the General Court (see, to that effect, Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 29, and Case C-197/99 P *Belgium* v *Commission* [2003] ECR I-8461, paragraph 80 read in conjunction with paragraph 83).

30 It is clear from established case-law that the obligation to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case and that the reasoning may therefore be implicit on condition that it enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (see, in particular,

Case C-16/07 P *Chetcuti* v *Commission* [2008] ECR I-7469, paragraph 87, and Case C-440/07 P *Commission* v *Schneider Electric* [2009] ECR I-6413, paragraph 135).

31 In the present case, it is clear from the judgment under appeal that the General Court addressed the appellant's argument that, by refusing to apply Article 31(2) of the Staff Regulations to him, the Commission breached Article 233 EC and the principles of equal treatment, equity, sound administration and the right to reasonable career prospects.

32 The General Court dismissed the claim that Article 31(2) of the Staff Regulations had been breached and, in paragraph 44 of the judgment under appeal stated that 'the irregularities which the applicant claims the Commission was guilty of in the management of his recruitment, whether it be the breach of Article 233 EC or that of the principles of equal treatment, equity, sound administration and the right to reasonable career prospects, are not liable to have an effect on the legality as such of the classification decision contested by the applicant'.

33 Thus, it must be held that it is apparent from the grounds of the judgment under appeal that the General Court dismissed the claims in question for the same reasons as those on which it based its decision to dismiss the plea alleging breach of Article 31(2) of the Staff Regulations.

34 As regards the appellant's argument that the General Court was obliged to examine the plea of breach of the principle of equal treatment independently, it must be observed that, in paragraphs 45 and 46 of the judgment under appeal, the reasons why that court considered that that principle did not allow the appellant to be classified in the higher grade of the career bracket were clearly explained.

35 The fact that the General Court, on the merits, arrived at a different conclusion from the appellant cannot in itself vitiate the judgment for failure to state reasons (Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 80).

36 Having regard to the foregoing considerations, it must be concluded that the reasons stated for the judgment under appeal make it possible, to the requisite legal standard, to understand the reasons for which the General Court dismissed the claims made by the appellant at first instance.

37 Therefore, the first plea relied on by the appellant in support of his appeal must be rejected as unfounded.

The second plea in law

Arguments of the parties

38 By its second plea, the appellant submits that the General Court failed to exercise the unlimited jurisdiction it has in disputes of a financial character to grant him compensation of its own motion.

39 The appellant disputes paragraph 47 of the judgment under appeal in particular, in which the General Court held that, although the organisation of another oral test may

have deprived him of a chance to be recruited in Category A at an earlier point in time and, accordingly, to be promoted more rapidly within his new career bracket, he did not put an application for financial compensation for that loss before the Court.

40 The Commission contends that this plea is inadmissible since it was raised for the first time in the appeal. It adds that, in any event, there were no grounds in this case for granting compensation to the appellant and, accordingly, no basis for the General Court to exercise its unlimited jurisdiction in financial matters.

Findings of the Court

– Admissibility

41 As the Advocate General observed in point 50 of her opinion, the question whether the General Court is obliged to award financial compensation to the appellant of its own motion is a question of law amenable to review on appeal, the admissibility of which cannot be subject to a condition that the appellant make a claim for compensation at first instance.

42 Such an allegation, which essentially amounts to accusing the General Court of disregarding the extent of its jurisdiction, cannot, by its very nature, be relied on at

first instance, so that the plea of inadmissibility raised by the Commission must be dismissed.

43 The second plea relied on by the appellant in support of his appeal must therefore be declared admissible.

– Merits

44 According to settled case-law, under the second sentence of Article 91(1) of the Staff Regulations, the General Court has, in disputes of a financial character, unlimited jurisdiction, pursuant to which it has the power, if need be, of its own motion to order the defendant to pay compensation for the damage caused by the defendant's wrongful act and, in such a case, taking account of all of the circumstances of the case, to assess the damage suffered ex aequo et bono (see, inter alia, Case 24/79 *Oberthür* v *Commission* [1980] ECR 1743, paragraph 14; Joined Cases 176/86 and 177/86 *Houyoux and Guery* v *Commission* [1987] ECR 4333, paragraph 16; Case C-90/95 P *de Compte* v *Parliament* [1997] ECR I-1999, paragraph 45; and Case C-348/06 P *Commission* v *Girardot* [2008] ECR I-833, paragraph 58).

45 'Disputes of a financial character' within the meaning of that provision include not only actions brought by staff members seeking to have an institution held liable, but also all those seeking payment by an institution to a staff member of a sum which he considers to be due to him under the Staff Regulations or other measure governing their working relations (see, to that effect, Case C-135/06 P *Weißenfels* v *Parliament* [2007] ECR I-12041, paragraph 65).

46 According to the case-law of the Court an action by which an official seeks annulment of a decision affecting his position under the Staff Regulations may also give rise to a dispute of a financial character (see *Oberthür* v *Commission*, paragraph 14, and *Houyoux and Guery* v *Commission*, paragraph 16, read in conjunction with paragraph 1).

47 In particular, the Court has held that an action by which an official seeks a judicial review of his classification likewise gives rise to a dispute of a financial character (Case 83/63 *Krawczynski* v *Commission* [1965] ECR 623, at 633). As the Advocate General observed in point 58 of her opinion, the logic behind this is that the decision of the appointing authority on the classification of an official not only has an impact on the career of the person concerned and his personal position within the hierarchy of the authority, but also has direct effects on his pecuniary rights, in particular the level of his remuneration under the Staff Regulations.

48 It follows that the action brought at first instance by Mr Gogos was of a financial character within the meaning of Article 91(1) of the Staff Regulations. The General Court therefore had unlimited jurisdiction in this case.

49 The unlimited jurisdiction conferred on the Courts of the European Union by Article 91(1) of the Staff Regulations entrusts the Courts of the Union with the task of providing a complete solution to the disputes brought before it (*Weißenfels* v *Parliament*, paragraph 67, and Case C-197/09 RX-II *M* v *EMEA* [2009] ECR I-12033, paragraph 56).

50 As the Advocate General observed in point 66 of her opinion that jurisdiction is primarily intended to enable the Courts of the Union to guarantee the effectiveness of the judgments by which they annul decisions in staff cases, so that if the annulment

of a decision of the appointing authority which contains errors of law is not sufficient to assist the official concerned in enforcing his rights or to protect his interests effectively, the Courts of the Union may award compensation of their own motion.

51 Although, in this case, the General Court concluded that the classification decision and the decision on the complaint were not vitiated by an error of law, it must be observed that, as indicated in paragraph 44 of this judgment, unlimited jurisdiction also gives the Courts of the Union, even in cases where they do not annul the decision at issue, the power, if need be, of their own motion to order the defendant to pay compensation for the damage caused by the defendant's wrongful act in the performance of public duties.

52 However, as the Advocate General observed in points 68 and 75 of her opinion, it must be held, in the present case, that the disadvantages suffered by Mr Gogos in connection with his remuneration and his career have been caused, not by the classification decision or the decision on the complaint, but by the errors of law committed by the Commission in the course of the competition, errors which Mr Gogos did not plead in the present proceedings.

53 Against that background, the General Court was right not to exercise its unlimited jurisdiction, so that the second plea relied on by the appellant in support of his appeal must also be rejected as unfounded.

The claim for compensation for the undue length of the proceedings before the General Court

Arguments of the parties

54 The appellant seeks an order from the Court awarding him EUR 50 000 by way of compensation for the undue length of the proceedings before the General Court.

55 The Commission contends that this is a new claim, raised for the first time on appeal, so that it must be dismissed as inadmissible. It adds that the claim is, in any event, manifestly without foundation.

Findings of the Court

56 It must be observed, in that regard that, although the failure, if proven, on the part of the General Court to adjudicate within a reasonable time can give rise to a claim for damages brought against the European Union under the provisions of Article 268 TFEU in conjunction with the second paragraph of Article 340 TFEU (Case C-385/07 P *Der Grüne Punkt - Duales System Deutschland* v *Commission* [2009] ECR I-6155, paragraph 195), Article 113(1) of the Rules of Procedure of the Court provide

that, in an appeal, the appellant's claims must seek to set aside, in whole or in part, the judgment of the General Court and, as the case may be, seek the same form of order, in whole or in part, as that sought at first instance (Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others* v *Council* [2008] ECR I-6513, paragraph 205).

57 Accordingly, where there is no indication that the length of the proceedings affected their outcome in any way, a plea that the proceedings before the General Court did not satisfy the requirements concerning completion within a reasonable time cannot as a general rule lead to the setting aside of the judgment delivered by that Court and must therefore be declared inadmissible (*FIAMM and Others* v *Council*, paragraphs 203 and 211).

58 However, Mr Gogos did not claim that the allegedly undue length of the proceedings had had an effect on the decision in the case before the General Court or ask that the judgment under appeal be set aside on that ground.

59 Accordingly, the claim for compensation made by the appellant in this appeal must be dismissed as inadmissible.

60 It follows from all of the foregoing considerations that the appeal must be dismissed.

Costs

61 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 118 of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

62 However, pursuant to the second paragraph of Article 122 of those Rules the Court may, in appeals brought by officials or other servants of an institution, order the parties to share the costs where equity so requires.

63 In the circumstances of the case, it is appropriate to apply this provision and to rule that each party shall bear its own costs.

On those grounds, the Court (First Chamber) hereby:

1. Dismisses the appeal;

2. Orders Mr Gogos and the Commission to bear their own costs.

[Signatures]