ORDER OF THE COURT (Fourth Chamber)
12 December 1996 *

In Case C-49/96 P,

Nicolaos Progoulis, an official of the Commission of the European Communities, represented by Konstantinos Adamantopoulos and Vassilios Akritidis, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 12 Boulevard de la Foire,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (Fifth Chamber) of 15 December 1995 in Case T-131/95 *Progoulis* v *Commission* [1995] ECR-SC II-907, seeking to have that order set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Ana Maria Alves Vieira, of its Legal Service, assisted by Bertrand Wägenbaur, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Commission's Legal Service, Wagner Centre, Kirchberg,

* Language of the case: French.

THE COURT (Fourth Chamber),

composed of: J. L. Murray (Rapporteur), President of the Chamber, C. N. Kakouris and H. Ragnemalm, Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court on 20 February 1996, Mr Progoulis brought an appeal in accordance with Article 49 of the EC Statute and the corresponding provisions of the ECSC and EAEC Statutes of the Court of Justice against the order of the Court of First Instance in Case T-131/95 *Progoulis* v *Commission* [1995] ECR-SC II-907 ('the contested order'), which dismissed his application for (1) annulment of the Commission's decision addressed to him by letter of 20 March 1995, rejecting his application for regrading in Grade B 1, Step 2, with retroactive effect from 1 March 1983, and for an order that the Commission pay the sum due in consequence of such regrading, together with compound interest at a rate prescribed by law of 10% per annum, (2) measures of organization of procedure under Article 64 of its Rules of Procedure and (3) costs.

2 According to the contested order, the dispute between Mr Progoulis and the Commission arose in the following circumstances:

'(1) In 1982 Mr Progoulis passed Open Competition COM/B/362, organized by the Commission to establish a reserve of assistants of Greek nationality in Grades B 3 and B 2.

(2) By decision of 9 March 1983, which took effect on 1 March 1983, Mr Progoulis was appointed a probationary official and classified as an assistant in Grade B 3, Step 2.

(3) On the following day, 10 March 1983, Mr Progoulis submitted a request for review of his classification.

(4) By letter of 13 July 1983, the appointing authority confirmed its decision, citing the opinion of the Grading Committee which had credited Mr Progoulis with 12 years 9 months by way of professional experience gained before his entry into the service of the Communities.

(5) On 10 October 1983 Mr Progoulis lodged a complaint in respect of that decision on the ground that, contrary to Paragraph 1(b) of Annex II to the appointing authority's decision of 6 June 1973 on the criteria applicable to grade and step classification upon recruitment, the appointing authority had failed to take into account the length of his compulsory military service.

(6) By decision of 18 November 1983, which took effect on 1 December 1983, Mr Progoulis was established and assigned to the Directorate-General for Agriculture, in the "Budgetary matters and financial coordination" section of the directorate responsible for the European Agricultural Guidance and Guarantee Fund (EAGGF).

(7) On 19 January 1984 the Commission adopted a decision identical to that of 18 November 1983, except that it assigned Mr Progoulis to the "EAGGF Guidance Section".

(8) By decision of 20 January 1984, which took effect on 1 March 1983, the appointing authority — in response to the complaint lodged by the applicant on 10 October 1983 — revoked the instrument of appointment of 9 March 1983 and assigned Mr Progoulis to the "EAGGF budgetary matters and financial coordination" section, in Grade B 3, Step 3.

(9) By decision of 2 March 1984, which took effect on 1 March 1983, the appointing authority cancelled and replaced the decision of 20 January 1984. The new decision was identical to the annulled decision in all respects, save only for the fact that it assigned Mr Progoulis to the "EAGGF Guidance Section" instead of the "Budgetary matters and financial coordination" section.

(10) On 5 December 1991 Mr Progoulis submitted a request for re-grading, either to Grade B 2 on the basis of the last subparagraph of Paragraph 1(b) of Annex II to the decision of 6 June 1973, or, if the Commission refused, to Grade B 1, since, he maintained, a precedent already existed for the reclassification of an official in a new career bracket.

(11) By letter of 6 April 1992, the appointing authority, after noting that the request had been submitted out of time, rejected it on the ground that Article 3 of Annex I to the decision of 6 June 1973 reserves the upper grades of career brackets B 3/B 2, C 3/C 2 and D 3/D 2 to promotions from within the bracket concerned, and that Paragraph 1(b) of Annex II to that decision was not applicable. The appointing authority added that classification in Grade B 1 could not be contemplated since the competition in which Mr Progoulis had been successful only gave access to the B 3/B 2 career bracket.

(12) On 2 July 1992 the applicant lodged a complaint in respect of the Commission's response.

(13) On 6 October 1992 the appointing authority rejected the complaint as inadmissible on the ground that it sought to call in question the grading decision of 20 January 1984 and was therefore out of time.

(14) The applicant did not bring proceedings in respect of that rejection.

(15) On 6 May 1994 the applicant submitted a fresh request for review of his classification, referring in particular to the judgment of the Court of First Instance of 28 September 1993 in Joined Cases T-103/92, T-104/92 and T-105/92 *Baiwir and Others* v *Commission* [1993] ECR II-987.

(16) On 12 July 1994 the appointing authority refused that request.

(17) On 10 October 1994 the applicant lodged a complaint in respect of that refusal, seeking reclassification in Grade B 1, Step 2, with retroactive effect from 1 March 1983, and payment of the sums due as a consequence, together with interest.

(18) On 20 March 1995 the appointing authority rejected that complaint.

(19) On 19 June 1995 the applicant brought proceedings contesting the decision rejecting his complaint of 10 October 1994. By separate document lodged at the Registry of the Court of First Instance on 21 August 1995, the Commission, pursuant to Article 114 of the Rules of Procedure, raised a plea of inadmissibility, dated 18 August 1995, objecting that the action had been brought out of time and contested an act which did not adversely affect the applicant. Mr Progoulis submitted his observations on that plea on 26 October 1995.'

The contested order

3 In the contested order, the Court of First Instance held first of all that the decision which the applicant sought to have annulled did no more than confirm the grading decision of 2 March 1984 (paragraph 35).

4 Secondly, after noting that the time-limits for lodging a complaint and for bringing proceedings are mandatory and that any exemptions or derogations must be narrowly construed, the Court of First Instance rejected the applicant's argument that he had been deterred from bringing an action earlier on account of his status as a probationary official with a subordinate role within the Commission. The Court

of First Instance held, first, that the grading decision at issue had been adopted after the applicant had been established and, second, that officials are by definition subordinate to the institution employing them. Consequently, if the applicant's argument were to be accepted, the time-limits set for bringing proceedings would be rendered wholly inoperative, which would be incompatible both with the system of remedies established by the Staff Regulations of Officials of the European Communities and the principle of legal certainty (paragraph 36).

5 Thirdly, the Court of First Instance rejected the arguments which had been put forward by the applicant to justify re-opening the time-limits for the purposes of bringing proceedings, and which were predicated on the emergence of new and material facts, that is, the judgment in *Baiwir and Others* v *Commission*, cited above, and the reclassification of another official (Mr E) in a new career bracket.

6 As regards that judgment, the Court of First Instance noted in the contested order that, according to established case-law (Case 43/64 *Müller* v *Council* [1965] ECR 385, Case 34/65 *Mosthaf* v *Commission* [1966] ECR 521 and Case 125/87 *Brown* v *Court of Justice* [1988] ECR 1619, paragraph 13), the only persons concerned by the legal effects of a judgment annulling an act are the parties and persons to whom the annulled act itself is of direct concern, and a judgment can constitute a new fact solely in relation to those persons (paragraph 41).

7 In the present case, however, the Court of First Instance found nothing in the documents before it to indicate that the applicant was directly concerned by the act annulled in *Baiwir and Others* v *Commission*. That judgment could not therefore constitute a new and material fact relevant to Mr Progoulis and capable of causing time to run afresh for the purpose of bringing proceedings (paragraph 43).

8 For the rest, the Court of First Instance pointed out that the central issue in *Baiwir and Others* v *Commission* was of a different nature from that in the applicant's dispute with the Commission (paragraph 45).

9 As for the supposed reclassification of Mr E in a new career bracket, the Court of First Instance found that Mr Progoulis had been aware of the relevant circumstances since 5 December 1991 (paragraph 46); it had therefore been open to him, in so far as such reclassification might have constituted a new fact capable of causing time to run afresh, to bring proceedings contesting the rejection of the complaint which he had lodged on 2 July 1992, but he had refrained from doing so (paragraph 49).

10 In that regard, the Court of First Instance also took the view that if, as Mr Progoulis asserted, he had been unsure of the truth or relevance of those circumstances, he should have made every effort at the appropriate time to verify them before initiating the pre-litigation procedure and then bringing proceedings (paragraph 48).

11 Lastly, the Court of First Instance held the second subparagraph of Article 87(3) of its Rules of Procedure to be applicable and ordered Mr Progoulis to pay the costs. It considered that, in the light of the circumstances of the case and the relevant case-law, Mr Progoulis could have foreseen that his application would be inadmissible; accordingly, the costs incurred by the Commission had to be regarded as unreasonable or vexatious (paragraph 54).

The pleas in law put forward in the appeal

12 Mr Progoulis puts forward four pleas in law to challenge the contested order.

13 His first plea is that the Court of First Instance erred in law by rejecting in their entirety his legal arguments regarding *Baiwir and Others* v *Commission*.

14 Under the first limb of that plea Mr Progoulis argues that the Court of First Instance erred in applying to his case the case-law of the Court of Justice to the effect that the only persons concerned by the legal effects of a judgment annulling an act are the parties and persons to whom the annulled act itself is of direct concern, and that a judgment can constitute a new fact solely in relation to those persons.

15 Under the second limb of the plea Mr Progoulis maintains that the Court of First Instance misinterpreted *Baiwir and Others* v *Commission* in viewing the sole purpose of that judgment as being to determine whether the grading of an official appointed to a post in a higher category following an open competition is governed by Article 32 of the Staff Regulations or Article 46 thereof. Rather, the principle laid down in *Baiwir and Others* v *Commission* is that successful candidates, whether internal or external, must be accorded equal treatment as regards the account taken of professional experience acquired by them before entry into service.

16 Mr Progoulis adds that, since the rule that the most favourable provision must be applied was observed in *Baiwir and Others* v *Commission*, it must also, by virtue of the principle of non-discrimination, be observed in his case. Consequently, he maintains, the appropriate provision is Paragraph 1(b) of Annex II to the decision of 6 June 1973 — which provides that, when the duration of military service exceeds 24 months, the official concerned may be moved to a higher grade — and he must therefore be reclassified in Grade B 1, Step 2.

17 In his second plea in law, Mr Progoulis argues that, according to the judgment in Case 127/84 *Esly* v *Commission* [1985] ECR 1437, Mr E's reclassification in a new career bracket also constitutes a new and material fact. He also considers that there is no justification for the difference in treatment between himself and Mr E who

was reclassified in a new career bracket even though he had not completed military service. Moreover, he was not certain of the facts concerning Mr E until April 1995.

18 Furthermore, the applicant claims that if the Commission were to produce Mr E's monthly pay slips for 1982 to 1986, they would bear out his allegations concerning Mr E's reclassification in a new career bracket. He therefore asks the Court to request the Commission, by way of a measure of inquiry under Article 45 of its Rules of Procedure, to produce those slips.

19 In his third plea, Mr Progoulis argues that the Commission misused its powers by intimidating him so as to deter him from asserting his rights through the initiation of judicial proceedings and by refusing to apply to him as appropriate Paragraph 1(b) of Annex II to the decision of 6 June 1973 concerning the taking into account of the length of his military service.

20 In his fourth plea, Mr Progoulis alleges that the Court of First Instance erred in law by applying to him Article 87(3) of the Rules of Procedure, under which he was ordered to bear the costs which he had caused the Commission to incur.

21 Mr Progoulis claims to have lodged his application in good faith, in the belief that the judgment in *Baiwir and Others* v *Commission* would enable him to put forward a sound argument for his reclassification in Grade B 1. Furthermore, since the Commission had refused to give him a satisfactory explanation in the course of the pre-litigation procedure, he decided that the only way of asserting his rights was through judicial proceedings.

Findings of the Court

22 Under Article 119 of the Court's Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order.

The first plea in law

23 It should be noted at the outset that, in accordance with Article 51 of the EC Statute of the Court of Justice and with Article 112(1)(c) of the Court's Rules of Procedure, an appeal must indicate clearly those points of the judgment at first instance which are contested, together with the legal arguments put forward in support of the application to have it set aside.

24 As regards the first limb of the first plea, suffice it to note that the applicant has failed to put forward any arguments to establish that, in making its findings, the Court of First Instance erred in law. On that ground, this plea must therefore be rejected as clearly inadmissible.

25 As regards the second limb of the first plea, concerning the interpretation of the judgment in *Baiwir and Others* v *Commission*, the Court has consistently held that where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements under Article 51 of the EC Statute of the Court of Justice or Article 112(1)(c) of the relevant Rules of Procedure; in reality, such an appeal amounts to no more that a

request for re-examination of the application submitted to the Court of First Instance, a matter which falls outside the jurisdiction of the Court of Justice by virtue of Article 49 of the EC Statute (see *inter alia* the order of 17 October 1995 in Case C-62/94 P *Turner* v *Commission* [1995] ECR I-3177, paragraphs 15 to 17).

26 In his appeal, Mr Progoulis merely repeats the arguments previously submitted to the Court of First Instance, without attempting to establish that its findings are mistaken in law. On that ground, this plea must therefore be rejected as clearly inadmissible.

27 For the rest, the second limb of the first plea contests an alternative line of reasoning in the judgment of the Court of First Instance and is therefore in any event nugatory (Case C-326/91 P *De Compte* v *Parliament* [1994] ECR I-2091, paragraph 94).

28 In view of the foregoing considerations, the first plea in law must be rejected as clearly inadmissible.

The second plea in law

29 In his second plea, Mr Progoulis merely reiterates the arguments previously submitted to the Court of First Instance without attempting to establish that its findings are mistaken in law.

30 Consequently, for the same reasons as those set out in paragraph 24 of this judgment, the second plea in law must be rejected as clearly inadmissible.

The third plea in law

31 As regards the third plea, it should first of all be noted that, under Article 48(2) of the Rules of Procedure of the Court of First Instance, new pleas in law may not be introduced in the course of the proceedings unless they are based on matters of law or of fact which have come to light in the course of the procedure.

32 To allow a party to put forward for the first time in proceedings before the Court of Justice a plea in law which it has not raised in proceedings before the Court of First Instance would be to allow it to bring before the Court — whose appellate jurisdiction is limited — a case of wider ambit than that which came before the Court of First Instance. In an appeal, the Court's jurisdiction is thus confined to review of the findings of law on the pleas argued at first instance (Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 59).

33 In the present case, suffice it to note that the third plea in law alleging that the Commission misused its powers was not raised before the Court of First Instance and must therefore be rejected as clearly inadmissible.

The fourth plea in law

34 Under the second paragraph of Article 51 of the EC Statute of the Court of Justice, no appeal lies to the Court regarding only the amount of the costs or the party ordered to pay them.

35 Since all the other pleas in law put forward by Mr Progoulis have been rejected, his plea regarding costs must, by virtue of that provision, be rejected as inadmissible (see the orders of 13 January 1995 in Case C-253/94 P *Roujansky* v *Council* [1995] ECR I-7, paragraph 14, and Case C-264/94 P *Bonnamy* v *Council* [1995] ECR I-15, paragraph 14).

36 In those circumstances, this appeal must be dismissed as clearly inadmissible in accordance with Article 119 of the Rules of Procedure.

Costs

37 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 70 of those Rules provides that in proceedings between the Communities and their servants, the institutions are to bear their own costs. However, by virtue of Article 122 of the Rules, Article 70 is not to apply in appeals against an institution brought by one of its officials or other servants. In this case the applicant has been unsuccessful in his pleadings and must therefore be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Dismisses the appeal as clearly inadmissible.

2. Orders the appellant to pay the costs.

Luxembourg, 12 December 1996.

R. Grass — Registrar

J. L. Murray — President of the Fourth Chamber