JUDGMENT OF THE COURT (THIRD CHAMBER)
6 JULY 1983 [1]

Kirsten Johanning
v Commission of the European Communities

(Official — Initial classification of a member of the language staff)

Case 230/82

Officials — Staff Regulation — Amendment — Reorganization of the career brackets of assistant translator and translator — Lack of transitional provisions — Power of the appointing authority

(Council Regulation No 912/78, Art. 13)

Since Regulation No 912/78 amending the Staff Regulations abolished with effect from its entry into force Grade L/A 7 in the career bracket of assistant translator, it is for the appointing authority to resolve any transitional legal problems caused by that measure in the absence of provisions in the said regulation to that effect.

In Case 230/82

KIRSTEN JOHANNING, an official of the Commission of the European Communities, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18A Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by John Forman, a member of its Legal Department, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

1 — Language of the Case: French.

APPLICATION for the annulment of the rejection of the applicant's request for an alteration of her classification,

THE COURT (Third Chamber),

composed of: U. Everling, President of Chamber, Y. Galmot and C. Kakouris, Judges,

Advocate General: S. Rozès
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Facts

1. (a) Until the entry into force of Council Regulation No 912/78 of 2 May 1978 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (Official Journal, L 119, p. 1) the career bracket of assistant translator extended pursuant to Annex I A of the Staff Regulations over Grades L/A 8 and L/A 7 and that of translator over Grades L/A 6 and L/A 5.

The Commission decision describing the basic posts figuring in the said Annex I A and the duties they involve defined an "Assistant translator" as a "Translator ... in the process of developing his skills" and a "Translator" as an "Experienced translator who is specialized in certain specific fields or who can give evidence of extensive linguistic knowledge".

Under a Commission decision on the criteria applicable to the assignment to a grade and step on recruitment the

appointing authority might by way of exception and to take account of the requirements of recruitment, assign the successful applicant to a higher grade in the career brackets and intermediate career brackets provided that he had experience of a minimum of one year for Grade L/A 7 and to take account of the experience of an applicant exceeding that taken into account for the purposes of determining the grade on appointment grant additional seniority of step of a maximum of 48 months corresponding to a minimum of five years' experience.

(b) On 4 May 1978 the above-mentioned regulation entered into force and Article 13 thereof reorganized the career brackets for the language staff as set out in Annex I A to the Staff Regulations. Henceforth the career bracket for an assistant translator was confined to Grade L/A 8 whilst that of translator covered Grades L/A 7 and L/A 6.

The duties of a translator were described in the new description of the duties of the basic posts for language staff referred to in Annex I A to the Staff Regulations as those of an "Official who produces translation or does terminological, documentation or other work in the linguistic field" and the duties of an assistant translator were described as those of "A translator ... in the process of developing his skills".

Under the new criteria applicable to the assignment to a grade and step on recruitment published by the Commission in April 1981 the appointing authority might by way of exception and to take account of the requirements of recruitment, assign the successful applicant to the higher grade in the basic career brackets and intermediate career brackets provided that he had experience of a minimum of five years for Grade L/A 6 and to take account of the experience of an applicant exceeding that taken into consideration for the purposes of determining the grade on appointment grant additional seniority of step of a maximum of 48 months for a minimum of nine years' experience.

2. By notice of Competition No COM/LA/150 (Official Journal, C 71 of 22 March 1977, p. 6) the Commission opened a general competition based on tests to constitute a reserve of assistant translators with career bracket covering Grades L/A 8 and L/A 7. Under the heading "salary" in the notice of competition the basic monthly salary for Grade L/A 8, first step, was stated with the observation that: "Candidates may, however, start at a higher step on the strength of their training and experience. In exceptional cases a basic salary of up to BFR 77 730 (L/A 7 - 3) may be paid."

The applicant, who had 11 years' experience, took part in the competition and had her name entered on the reserve list.

By decision dated 14 April 1980 the applicant was appointed as translator and

classified in Grade L/A 7, Step 3. That decision referred to Competition No COM/LA/150 and Vacancy Notice No COM/1078/78 relating to a post of translator. The applicant was subsequently established.

3. According to particulars given by the Commission a total of 66 appointments were made on the basis of Competition No COM/LA/150 and the parallel Competition No COM/LA/151 relating to assistant translators for other main languages: of those 66 applicants 12 were appointed before 2 May 1978 including 6 in L/A 8 and 6 in L/A 7 and 54 were appointed thereafter including 23 in L/A 8 and 31 in L/A 7.

4. In April 1981 the applicant became aware of the new criteria applicable to classification in grade and step upon recruitment published during that month.

In a letter dated 22 April 1981 the applicant referred to those criteria and requested that her classification be reviewed in consideration of her experience which justified classification in Grade L/A 6, Step 3.

By letter dated 9 July 1981 the Secretary of the Grading Committee acknowledged the receipt of that request. By memorandum dated 12 November 1981 the committee informed the applicant that it had reconsidered her file and recommended the relevant authority to amend the grading originally made in Grade L/A 7, Step 3, to Grade L/A 6, Step 3.

By memorandum dated 24 November 1981 from the Directorate-General for Personnel and Administration the applicant was informed that the memorandum from the Grading Committee of 12 November 1981 was to be regarded as null and void. Since Competition No COM/LA/150 related only to Grades L/A 8 and L/A 7 reclassification in Grade L/A 6 was not possible under the Staff Regulations.

On 5 February 1982 the applicant made a complaint under Article 90 (2) of the Staff Regulations against that decision rejecting her request for regrading.

An express decision rejecting that complaint was sent to the applicant on 17 September 1982.

II — Procedure and conclusions

1. By application lodged at the Court Registry on 3 September 1982 the applicant brought an action against the Commission claiming that the Court should:

Declare that the appointing authority must apply its decision on classification in grade and step upon recruitment as from the applicant's appointment as a translator on probation;

Declare that the implied rejection of the applicant's request is null and void;

Order the Commission to pay the whole of the costs.

The Commission contends that the Court should:

Dismiss the action;

Make the appropriate order as to costs.

2. The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry. It did however put certain questions to the Commission which replied thereto in writing before the hearing.

III — Submissions and arguments of the parties

1. In support of her application the *applicant* relies on the principles of equal treatment, non-discrimination and the protection of legitimate expectation and also on Article 5 (3) of the Staff Regulations and the Commission decision on the criteria applicable to classification in grade and step upon recruitment. She claims that since she was appointed as a translator after the entry into force of Regulation No 912/78 following a vacancy notice for a translator, in the career bracket for a translator, the criteria of that decision ought to have been applied. According to those criteria she may claim classification in Grade L/A 6, Step 3, in view of her experience. In appointing her the Commission rightly recognized Competition No COM/LA/150 as equivalent to a competition for a translator and it cannot go back on that decision. The Commission is bound by the rules of classification which it had itself determined.

2. The *Commission* relies on the fact that the Competition No COM/LA/150 related only to posts as assistant translator and not as translator. According to the former career bracket of assistant translator applicants in that competition could at most claim appointment to Grade L/A 7 as assistant translators. After the entry into force of Regulation No 912/78 the Commission could, strictly according to principle, recruit applicants only in Grade L/A 8 as assistant translators. Since it nevertheless took the view that it ought not disappoint the legitimate hopes of applicants who according to the notice of competition might expect recruitment in Grade L/A 7 and that it ought not to discriminate between applicants according to whether they were recruited before or after the entry into force of Regulation No 912/78, it continued to recruit in Grade L/A 7 if the applicant had the necessary experience although Grade L/A 7 was henceforth a grade of translator. It could not reasonably go further without creating discrimination as against other officials since the competition in question was a competition for assistant translators and thus lower in level than a competition for translators. It correctly applied Articles 31 and 32 of the Staff Regulations and the criteria of its decisions relating thereto especially as recruitment in a higher grade and the grant of additional seniority of step are merely a matter for its discretion.

IV — Oral procedure

The applicant, represented by Mr Biel, and the Commission, represented by Mr Andersen, presented oral argument at the sitting on 5 May 1983.

The advocate General delivered her opinion at the sitting on 9 June 1983.

Decision

1 By application lodged at the Court Registry on 3 September 1982 Mrs Kirsten Johanning, an official of the Commission of the European Communities, brought an action for the annulment of the decision of the appointing authority refusing to amend the grade and step in which the applicant had been classified on her engagement as a member of the language staff.

2 The applicant was appointed a translator in Grade L/A 7, Step 3, by decision of 14 April 1980. That decision referred to Vacancy Notice No COM/1078/78 relating to a post of translator and to the open competition, based on tests, No COM/LA/150 to constitute a reserve of "assistant translators ... in the career brackets covering Grades L/A 8 and L/A 7", organized by the Commission in 1977 in which the applicant had successfully taken part.

3 Between the competition and the Commission decision to engage the applicant Council Regulation No 912/78 of 2 May 1978 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (Official Journal, L 119, p. 1) had reorganized the career bracket of assistant translator and translator as defined in Annex I A to the Staff Regulations. The career bracket of assistant translator previously covering Grades L/A 8 and L/A 7 was restricted to Grade L/A 8 and the career bracket of translator which previously covered Grades L/A 6 and L/A 5 henceforth covered Grades L/A 7 and L/A 6.

4 The applicant had 11 years' previous experience. That experience satisfied the conditions which, pursuant to the Commission decision on the criteria applicable to classification in grade and step upon recruitment, would, prior to the above-mentioned reorganization of the career brackets, have justified classification in L/A 7, Step 3, of the former career bracket of assistant translator.

5 After becoming aware of the new criteria for grading adopted after the reorganization of the career brackets the applicant requested the apointing authority to amend her grade and step and to assign her to Grade L/A 6, Step 3, which in the career bracket of translator would have corresponded to her experience according to the new criteria. That request was rejected and a complaint under Article 90 (2) of the Staff Regulations did not receive a reply within the period provided thereby, and the applicant thereupon brought the present action.

6 The applicant alleges that in appointing her to a post in a new career bracket of translator the appointing authority recognized that she possessed the qualifications and must therefore apply to her the criteria for an appointment in that career bracket which were in force when she was recruited, that is to say as amended by the Commission after the reorganization of the career brackets.

7 In answer the Commission states that the applicant had been appointed following a competition for assistant translators, that is, at a lower level than competitions for translators and that Grade L/A 7 as translator had been assigned to her and to other applicants in the same competition appointed after 2 May 1978 only in order not to disappoint their legitimate hopes of obtaining an appointment in Grade L/A 7 for which they satisfied the conditions in the career bracket of assistant translator at the time of the competition.

8 It must be observed that Regulation No 912/78 provided no transitional provision and abolished with effect from its entry into force Grade L/A 7 in the career bracket of assistant translator. That abolition caused certain transitional problems which it was for the appointing authority to resolve in the absence of appropriate provisions in the regulation.

9 In this case the applicants who had taken part in a competition before the reorganization of the career brackets might legitimately hope to be appointed in the higher grade of the former career bracket of assistant translator if they satisfied the conditions. The Commission took account thereof in assigning the applicants appointed after the entry into force of Regulation No 912/78, following a competition organized before that date, to the grade and step

which they might have expected according to the former criteria of appointment and classification in the former career bracket of assistant translator, whilst nevertheless appointing them, where appropriate, to the new career bracket of translator to which Grade L/A 7 was henceforth reserved.

10 Although that solution may have resulted in certain applicants being classified less favourably, according to the new criteria for appointment and grading, than certain applicants for posts as translators recruited as such, it must be observed that the applicants in question were engaged following a competition for assistant translators and their appointment as translators was possible only as part of the above-mentioned transitional practice. A difference in treatment resulting from the application to such applicants of the former criteria for appointment and grading as compared with the treatment of applicants engaged following a competition for translators is therefore justified.

11 It must be added that in adopting that transitional practice the Commission observed the principle of equality inasmuch as it determined the classification in grade and step of all the applicants engaged following the competition in question according to the same criteria irrespective of whether they were engaged before or, like the applicant, after the reorganization of the career brackets.

12 Since the classification in grade and step of the applicant was correctly effected, the appointing authority rightly refused her request to amend the decision relating thereto.

13 The application must therefore be dismissed.

Costs

14 Under 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, costs incurred by the institutions in proceedings by employees of the Commission are to be borne by those institutions.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Everling Galmot Kakouris

Delivered in open court in Luxembourg on 6 July 1983.

For the Registrar

H. A. Rühl
Principal Administrator

U. Everling
President of the Third Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 9 JUNE 1983 [1]

Mr President,
Members of the Court,

There is before the Court an application made by Kirsten Johanning against the Commission of the European Communities for the annulment of the rejection of her request for regrading of 5 February 1982.

I — The facts are as follows:

The Commission published in the Official Journal of the European Communities of 22 March 1977 a notice of competition, No COM/LA/150, for an open competition, based on tests, to constitute a reserve of assistant trans-

1 — Translated from the French.