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.

lators (Principal language French, German or Italian) in the career bracket covering Grades L/A 8 and L/A 7.

Apart from the general conditions of eligibility the notice specified the nature of the duties of an assistant translator, namely the translation of legal, economic, administrative and technical texts, and the basic salary in Belgian francs.

Mrs Johanning passed the tests and her name was entered on the reserve list.

On 14 April 1980 by decision of the Commission she was appointed a probationary translator in Grade L/A 7, Step 3, following a vacancy notice, No COM/1078/78, containing *inter alia* the following particulars:

"Category and career bracket: L/A 7-L/A 6 Nature of duties:

Translator

— Translation of all kinds of texts for the Commission."

She was assigned to the Directorate-General for Personnel and Administration, Medium and Long-term Translation Department, with effect from 3 March 1980.

On 26 November 1980 she was established as an official with effect from 3 December 1980.

On 22 April 1982 she requested that her grading be amended to L/A 6, Step 3.

On 9 July 1981 she received an acknowledgement of her request and by memorandum dated 12 November 1981 the Grading Committee informed her that it thought it "could recommend the competent authority to amend the original classification of Grade L/A 7, Step 3 to Grade L/A 6, Step 3".

However, on 24 November 1981 she was informed by the Director-General for Personnel and Administration that it was impossible under the Staff Regulations to give her such a grading.

On 5 February 1982 she made a complaint through official channels under Article 90 (2) of the Staff Regulations to the appointing authority.

On 17 September 1982 she was informed that ther complaint was rejected.

By application lodged at the Court Registry on 3 September she brought this action in which she puts forward four submissions:

Breach of the principle of equal treatment;

Breach of the principle of non-discrimination;

Infringement of Article 5 of the Staff Regulations;

Illegality *largo sensu* and frustration of legitimate expectation.

The Commission contends that the application should be dismissed.

II — Admissibility

Admissibility is not contested. It is therefore necessary to proceed to consider the substance.

III — A — The relative complexity of the case submitted to the Court is due to the following circumstances:

1. In *1977* when the applicant was successful in the tests of the open competition for the constitution of a

reserve of *assistant* translators, the career bracket covered Grades L/A 8 and L/A 7 for language staff. It was possible to take account of the applicant's special training and experience so as to award her by way of exception a basic salary corresponding to Grade L/A 7, Step 3.

The career bracket of *translator* then covered Grades L/A 6 and L/A 5.

2. In *1980* when she was appointed a probationary translator the career bracket of an assistant translator was then confined to Grade L/A 8 and that of translator covered Grades L/A 7 and L/A 6 following 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.

3. Finally, let us remember that by way of exception the provisions of the Commission decision on the criteria applicable to classification in grade and step upon recruitment allowed the appointing authority to appoint a successful applicant to the upper grade of the basic and intermediate career brackets if he gave evidence of experience of a minimum of one year in L/A 7 and further to accord additional seniority of step of a maximum of 48 months.

Of those various factors let us bear in mind that this was a competition organized in 1977 under certain provisions, followed by an appointment made in 1980 under new rules with this peculiarity, that strictly according to principle successful applicants from one and the same competition might be subject either to the old rules or the new, according to their date of recruitment.

B — 1. Since she was appointed on 14 April 1980, that is, after Council Regulation No 912/78 of 2 May 1978, following an open competition for the constitution of a reserve of *assistant* translators, the applicant could at most have been recruited for a post of assistant translator in the only applicable grade, L/A 8, and have been given an additional seniority allowance.

Such a classification would have meant discrimination against her since other successful applicants with the same training and seniority had been appointed to Grade L/A 7 before 4 May when the aforesaid regulation entered into force.

The Commission rightly, it seems to me, maintains that it refused to create such discrimination, took account of the principle of the protection of the official's legitimate expectation and decided by way of exception to engage her in a post corresponding to Grade L/A 7, Step 3, and gave her the position which she was entitled to expect when she took the tests for a competition for *assistant* translators in 1977. However, in 1980 when she was appointed only a post of *translator* allowed recruitment in L/A 7, Step 3, a post for which a

vacancy was announced in Notice No COM/1073 to 1079/78.

2. The decision thus taken did not have the effect of giving the applicant the qualifications consistent with a post of translator required of successful applicants in the corresponding competition for such a basic post, the level of tests for which is necessarily higher than that for competitions for assistant translators. Nor did it have the effect of assimilating the two posts, which remain quite distinct.

At most as regards classification it overcame the discriminatory situation in which the applicant would have found herself had the new rules subsequent to the adoption of Regulation No 912/78 been strictly applied, and which would have meant her being placed in Grade L/A 8.

3. By requesting an initial classification in Grade L/A 6, Step 3, on the sole ground that she was engaged for a post of translator and that therefore the provisions of the Commission decision on the criteria applicable to classification in grade and step upon recruitment should be applied to her, the applicant is in fact requesting discrimination in her favour but to the detriment of the successful applicants in the same competition, No COM/LA/150, engaged before Regulation No 912/78 entered into force as assistant translators in L/A 7 who are thus unable to claim reclassification as translators in L/A 6.

4. In this case and by way of exception the Commission was able to take a decision to place the applicant in Grade L/A 7, Step 3, precisely in order to observe the principle of equality of officials, which was jeopardized solely by the effect of the dates of recruitment prior or subsequent to the entry into force of an amending regulation.

It is true that it would have been desirable had transitional measures been provided for in Regulation No 912/78, the entry into force of which *ipso facto* involved differences in treatment between assistant translators, based solely on the date of recruitment. That observation nevertheless does not have the effect of establishing a breach of the principle of equality between officials placed in comparable situations of which the applicant complains, since the Commission took care to classify her according to the same conditions as the successful applicants in a similar situation to her own.

The fundamental principle of equality betwen officials placed in comparable situations [1] in this case prevents an automatic application of Article 5 (3).

The foregoing considerations lead me to conclude that Mrs Johanning's application should be dismissed and that she should bear her own costs.

1 — Judgment of 31. 5. 1979 in Case 156/78 *Newth* v *Commission* [1979] ECR 1941 at pp. 1952 and 1953.