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.

2. I will summarize the facts. The applicant was engaged by the Economic and Social Committee in June 1981 as a member of the temporary staff to carry out typing duties. Having been placed on the list of suitable candidates in Open Competition No C/22/79 for the recruitment of Greek-language typists which took place in December 1980, she was appointed a probationary official on 1 July 1981.

The probationary period, however, had a negative outcome. The report (required by Article 34 (2) of the Staff Regulations of Officials) which was drawn up by the administration on the applicant's ability to carry out the duties required by her post, on her efficiency and on her conduct at work pointed out her many shortcomings and recommended that she be dismissed. In particular the general assessment stated that "although Mrs Papageorgopoulos' professional and technical skills may be considered to be satisfactory, there are serious deficiencies in her knowledge of her mother tongue ... 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, which was drawn up on 27 November 1981, was communicated to Mrs Papageorgopoulos on 30 November. She considered that it was not objective and, five days later, she added her own oberservations; however, by a decision of 21 December 1981 the appointing authority dismissed her with effect from 31 December of that year. Subsequently (on 18 March 1982) the applicant submitted a complaint seeking the annulment of that decision which was expressly rejected by the Secretary General of the Economic and Social Committee in a memorandum of 16 July 1982.

Thereupon Mrs Papageorgopoulos brought an action on 15 October 1982 asking the Court to annul the report on the probationary period and the dismissal based upon it and to order the Economic and Social Committee to pay her all the arrears of remuneration and allowances from the date of the dismissal, with interest at an annual rate of 10 %. She also asked that she be paid the sum of BFR 10 000 per month, likewise with interest, by way of compensation for the non-material damage which she had suffered.

3. According to Mrs Papageorgopoulos, the report on her probationary period is unlawful for various reasons, in particular:

(a) infringement of Article 34 (2) of the Staff Regulations (in that it was drawn up and signed by a person lacking the necessary practical qualifications);

(b) infringement of essential procedural requirements (namely irregular compilation and inadequate statement of reasons);

(c) infringement of general principles of Community law (legitimate expectation and the duty of assistance);

(d) misuse of powers (interest of one of the reporting officers in wrongly evaluating her knowledge of Greek in order to have her dismissed).

I will deal with those complaints in a moment. However, I think it useful first

to recall the legal provisions relating to the probationary period and the scope of the judicial review to which measures adopted on the basis of that period may be subject.

Article 34 of the Staff Regulations provides that "officials ... shall serve a probationary period before they can be established" (paragraph 1) and that they are to be dismissed if their work during the probationary period does not prove adequate (first subparagraph of paragraph 2). Appointment or dismissal therefore represent the culmination of a procedure which is completed by stages and is governed by Chapter I of Title III (Articles 27 to 34).

As for the reports on the probationary period I would point out that if they contain negative assessments they may be regarded as measures adversely affecting the officials concerned because, since they may lead to the dismissal of the employeee, they have a direct bearing upon his legal situation. According to the case-law of the Court (relating to periodic reports, but equally applicable to reports such as the one in this case), "although it is true that [such] reports are made up of assessments which it is difficult for a court to review, this fact does not prevent their adoption from being vitiated for irregularity of form and procedure or patent error [or] misuse of discretionary power — defects [which are] capable of making them unlawful" (judgment of 25 November 1976 in Case 122/75, *Küster* v *Parliament* [1976] ECR 1685, paragraph 9 of the decision; see also the judgments of 17 March 1971 in Case 29/70, *Marcato* v *Commission* [1971] ECR 243; 12 May 1977 in Case 31/76, *Macevicius* v *Parliament* [1977] ECR 883; 3 July 1980 in Joined Cases 6 and 97/79 *Grassi* v *Council* [1980] ECR 2141).

It is therefore in the light of those principles that the applicant's complaints will be examined.

4. I shall begin with the alleged infringement of fundamental principles of Community law. Mrs Papageorgopoulos maintains that the principles of legitimate expectation and the duty of assistance have been breached; but those complaints, set out in the application with the reservation that they may be developed in the reply, have not been elaborated upon. However, neither the pleadings nor the oral procedure have provided evidence to bear them out.

A more complex problem is raised by the complaint of infringement of Article 34 (2) of the Staff Regulations. The applicant maintains that, with the exception of Mrs Pallis, the officials who drew up and signed the report could not have passed judgment on her professional qualities given their ignorance of the Greek language.

It seems to me that that argument is unfounded. As this Court has observed, "no provision in the Staff Regulations ... determines the authority competent ... to draw up and sign the report at the expiry of the probationary period referred to in Article 34 (2) ..." (judgment of 1 June 1978 in Case 99/77, *D'Auria* v *Commission*, [1978] ECR 1267, paragraph 4 of the decision). The practice followed by the Economic and Social Committee, as in many other institutions, is to use the general provisions for the implementation of Article 43 of the Staff Regulations on the assessment of officials, adopted in April 1975; and the Court has held that to be justified "having regard ... to the analogies between [the report at the expiry of the probationary period] and the periodic report" (paragraph 9 of the decision in *D'Auria*, cited above).

I would also point out that in a case similar to the present one (involving a Dutch translator working for the Commission whose report was drawn up by officials who lacked the necessary qualifications to assess her professional ability), the Court emphasized that "the Director of the Translation, Documentation, Reproduction and Library Directorate and the Head of the Translation (General Matters) Division were in possession of the assessment made by the coordinator of the group in which the applicant was working and were thus, in conjunction with her immediate superior, in a position to assess the applicant's ability, and the assessment which they made does not appear to be without foundation" (judgment of 26 February 1976 in Case 92/75 *Van de Roy* v *Commission* [1976] ECR 343, paragraph 8 of the decision).

This line of authority appears to me to be both logical and fair. The rule that reports are signed first by an official who is not the direct superior of the person concerned — and therefore not necessarily capable of evaluating specific professional abilities — and only countersigned with any necessary observations by the direct hierarchical superior, is provided in the interests of the employee on probation. The fact that several people contribute towards the general assessment ensures that those interests are better protected, whilst the involvement in making the assessment of those having close working relationships with the person concerned can ensure a more accurate assessment of his or her professional abilities, thus safeguarding the general interests of the service.

I would point out, moreover, that the report on the probationary period is intended to provide a general picture based on "the ability of the probationer to perform the duties pertaining to his post" and, in addition, on his "efficiency" and "conduct in the service" (Article 34 (2) of the Staff Regulations). Now the evaluation of the latter points certainly does not require knowledge of a language, in particular of Greek. Therefore at least in those areas the reporting officers were fully competent to express a judgment.

5. I will now examine the complaint of infringement of an essential procedural requirement. The applicant makes two allegations in that respect, namely that the compilation of the report was irregular and that there was an inadequate statement of reasons, and bases her application for annulment on the judgment of the Court of 6 October 1982 in Case 206/81 *(Alvarez* v *Parliament* [1982] ECR 3369).

In particular Mrs Papageorgopoulos complains that no entries were made under some headings, for example, those which should have shown her grade, her step, the principal duties which she carried out (in her case, the transcription of recorded tapes), her period of temporary assignment to the Internal Services Division of the Directorate General of the Economic and Social Committee and the observations of her hierarchical superiors. The Economic and Social Committee objects that these omissions are irrelevant for the purpose of forming a general assessment of the applicant. The principal duties carried out by a typist on probation, it states, inevitably coincide with the duties which

were assigned to her. It is true that there were no observations by her superiors; but it is also true their intention in countersigning the report was to endorse the judgment of its principal author. As for the temporary assignment to the Internal Services Division, the report takes it into account in assessing Mrs Papageorgopoulos' knowledge of English and French as "very good" (during that time she worked with an English language administrator).

Those arguments are persuasive; in any case, even if the report is vitiated by a number of irregularities of form, their lack of influence on the general assessment seems to me clear. One can be even more categorical in assessing the applicant's complaint that typing transcriptions from recorded tapes was not mentioned. In fact, by putting it forward, Mrs Papageorgopoulos demonstrates that she has a mistaken idea of her own duties because transcribing tapes clearly forms part of them.

As I have said, the second allegation made by the applicant in her complaint of infringement of an essential procedural requirement is that the report contains an inadequate statement of reasons. The mentions "insufficient" and "very good" attributed to her in the report, she says, are not accompanied by the required explanatory comments. The Economic and Social Committee replies that for an explanation of the description "insufficient" the author made express reference to the general assessment (see above at paragraph 2). As for the mention "very good" which was given to Mrs Papageorgopoulos for her knowledge of English and French, the absence of explanation is irrelevant: explicit as it is, in fact, that description does not require further comment; moreover the applicant is required to work, not in those languages, but in Greek.

Here, too, I am in agreement with the Economic and Social Committee. It is true that the fact that explanatory comments are required is apparent both from the form used for reports at the end of the probationary period and from the instructions for drawing up periodical reports and, as I have already noted, those instructions are applicable in this case. However, it should be pointed out that the space reserved for such comments is very restricted — so small that in practice it is only possible to make them in three or four words. It is important, however, that the assessment is adequately reasoned in order to enable the official, in drawing up his own observations, to take into account any charges levelled against him; it is also important — and Article 34 expressly provides so — that in the procedure at the end of the probationary period the principle of the right to be heard is observed.

In the case of Mrs Papageorgopoulos, however, the general assessment does in fact set out the reasons for the negative assessment, concisely but adequately. Moreover the report was communicated to the applicant in accordance with the normal procedure; and, as shown by the observations which she made on it, there is no doubt that she was made aware of that assessment. The rules of adversary procedure were therefore fully observed; accordingly, Mrs Papageorgopoulos' reliance on the aforementioned judgment in *Alvarez* v *Parliament*, in which the Court declared a dismissal void because the statement of the reasons on which it was based was drawn up following "a procedure which was not of an adversary nature", appears to be entirely irrelevant.

It follows that inadequacy of the statement of reasons cannot be argued either with regard to the combined provisions of Articles 25 and 34 of the Staff Regulations or with regard to the rules governing the drawing up of periodic reports and applicable by analogy to the report on the probationary period.

6. The allegation relating to misuse of powers remains to be examined. The applicant maintains that in reaching the negative assessment upon her the following matters were held against her:

(a) the stance which she adopted in support of a colleague, as appears from a letter sent to the Director General of the Economic and Social Committee on 3 November 1981;

(b) the fact that one of the authors (Mrs Pallis) had an interest in harming her, being, like Mrs Papageorgopoulos, a candidate for the post of head of the Greek section of the typing pool. Since she was the only one of the contributors to the report to understand Greek, Mrs Pallis was in a good position to carry out her intentions, maintains the applicant; it is in any case evident that the appraisal which she gave was dictated by malice. The applicant had in fact demonstrated her command of Greek at the time of the general competition for the recruitment of Greek-language typists.

However, Mrs Papageorgopoulos has failed to substantiate her allegations. Thus, it does not appear that her stance in support of a colleague has in any way had a bearing on the negative assessment made of her; and the same may be said regarding the animosity which Mrs Pallis is said to have nurtured towards her. In fact, as the defendant administration has pointed out, the two women were not competitors for the same post since Mrs Pallis had passed the age-limit for the competition for the selection of head of the Greek section of the typing pool. In any case, their careers — Mrs Papageorgopoulos was a typist and Mrs Pallis was a secretary — were different.

With regard to the applicant's knowledge of Greek, much has been said — including by the present writer — in the course of this action. However, the assessment of it is one of those complex value judgments which lie outside the Court's power of review. I shall restrict myself to making one point: as the Economic and Social Committee has observed — and the applicant was unable to contradict it on this point — the lacunae to which the report refers were demonstrated by the result achieved by Mrs Papageorgopoulos in the speed-typing test in the open competition, which was barely above the minimum required, and by failures in various tests in competitions at the Council and the Commission of the Communities.

Nor does it appear to me that there is any foundation for the argument that by succeeding in an open competition, the applicant had already demonstrated that she had a sufficient knowledge of Greek. If that argument were accepted the requirement of a probationary period would lose its *raison d'être:* as Advocate General Slynn has opined in Case 223/82 (*de Bruyn* v *Parliament* [1983] ECR 2879), it provides a "safety net" for the administration where applicants are

successful in an exam but prove inadequate in practical work.

7. A few words must be said in conclusion on Mrs Papageorgopoulos' financial claims. I note that she claims her salary from the date of her dismissal together with interest at an annual rate of 10%, and payment of BFR 10 000 as compensation for non-material damage for each month since her dismissal, also with interest.

Both claims must be rejected. In the case of dismissal of a probationary official, Article 34 (2) of the Staff Regulations provides for the payment of compensation equal to two months' basic salary if the person dismissed has completed six months of service and to one month's salary if he has completed less than that. In the present case the applicant received that amount of compensation and since her employment was terminated in compliance with the Staff Regulations no other payment is due to her.

The same applies to the compensation for non-material damage. The dismissal of a probationary employee, it is worth repeating, is a measure provided for by the Staff Regulations, and provided that it has been notified in conformity with those regulations, it does not give rise to any liability on the part of the institution. The procedure followed with regard to Mrs Papageorgopoulos was unimpeachable in form. It cannot therefore be maintained that she is entitled to any damages.

8. For the reasons set out above, I suggest that the Court dismiss the application lodged on 15 October 1982 by Mrs Chryssanti Papageorgopoulos against the Economic and Social Committee.

With regard to costs, I propose that each party shall bear its own costs as provided by Article 70 of the Rules of Procedure.