JUDGMENT OF THE COURT (THIRD CHAMBER)
13 DECEMBER 1984 [1]

Marie-Reine Hansen, née Meyer, v The Economic and Social Committee

(Official — Transfer from the secretarial B stream to the normal B stream)

Case 14/84

1. *Officials — Career — Correspondence between grade and post — Basic posts — Passage from the "secretarial B stream" to the "normal B stream" — Procedures (Staff Regulations, Annex I, Section A)*

2. *Application for a declaration of nullity — Application devoid of purpose — Unnecessary to give a decision*

In Case 14/84

MARIE-REINE HANSEN, NÉE MEYER, an official of the Economic and Social Committee, represented by Marcel Slusny of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Avocat, Centre Louvigny, 34 B IV Rue Philippe-II,

applicant,

v

THE ECONOMIC AND SOCIAL COMMITTEE, represented by Marius Simond, acting as Agent, with an address for service in Luxembourg at the Chambers of Mr Hamilius, Avocat-avoué, of the Luxembourg Bar, 11 Boulevard Royal,

defendant,

APPLICATION for a declaration that the decision of the Secretary General of the Economic and Social Committee of 1 July 1983 transferring the applicant is void in so far as she is still designated in that decision as a secretarial assistant,

1 — Language of the Case: French.

THE COURT (Third Chamber)

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

Advocate General: P. VerLoren van Themaat
Registrar: D. Louterman, Administrator

gives the following

JUDGMENT

Facts and Issues

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

I — Background

A — Preliminary considerations concerning the concept of "streams" or basic posts in Category B

At the beginning of the seventies the Council, whose attention had been drawn to the position of secretaries and technical staff whose career was restricted to Category C and who could be promoted to Category B only by taking part in competitions, decided to create different "streams" within Category B:

(i) the normal B stream (for officials qualified to carry out administrative and office duties);

(ii) the secretarial B stream (for officials involved essentially in secretarial work and typing);

(iii) the technical B stream (for officials engaged upon work of a technical nature).

Accordingly, an examination of the structure of Category B in Section A of Annex I to the Staff Regulations, which sets out the basic posts and career brackets in each category and in the language service, as provided for in Article 5 (4) of the Staff Regulations reveals that Career Brackets B 2/B 3 and B 4/B 5 contain three types of post, namely administrative assistant, technical assistant and secretarial assistant. According to footnote No 2 at the bottom of the page, the number of posts corresponding to those basic posts is "exactly and specifically fixed" in the list of posts appended to the budget for each institution.

The distinction between the three types of post has no effect with regard to the financial position of those concerned or their status under the Staff Regulations. However, the career prospects of officials in the normal B stream are better since they seem to advance more easily from Career Bracket B 4/B 5 to

Career Bracket B 2/B 3 and only then can apply for promotion to Grade B 1.

It is that difference in career prospects which lies at the heart of this dispute.

B — Facts of the Case

Mrs Hansen, who entered the service of the Economic and Social Committee as a typist in Grade C 5 on 4 June 1968, was assigned on 11 November 1969, to Division B of the Economic and Social Committee. From 1 June 1973 to 1 November 1978 she was assigned, as a secretary, to the Mail/Records/Library/Documentation Department.

In 1978 she was appointed a principal secretary in Directorate A and advanced to Grade C 1.

In the meantime, she had successfully taken part in Competition No B/25/74, organized in order to constitute a reserve of administrative assistants (normal B posts).

On 18 December 1979, in the absence of a normal B vacancy, she applied for a post of secretarial assistant (a secretarial B post) in the secretariat of Directorate A.

She was appointed a secretarial assistant with effect from 1 February 1980 in Grade B 5, Step 4.

For reasons which are not entirely clear and on which the parties have been unable to agree, the applicant requested the Secretary-General on 12 June 1980 to transfer her to another department.

On 8 March 1982, at the request of the Chairman of Group III of the general secretariat, who wished to ensure the proper functioning of his secretariat (which, according to the detailed list of posts for 1982, did not yet have a post of administrative assistant at its disposal, unlike the other two groups), Mrs Barbesta, an administrative assistant occupying a normal B post in the Mail/Records/Library/Documentation Department (Division for the Registry of the Assembly and the Bureau) was temporarily placed at that group's disposal.

It then became possible to move Mrs Hansen from her post as a secretarial assistant in Directorate A to the Mail/Records/Library/Documentation Department. She was placed at the disposal of the latter department by Decision No 534/1 of 11 March 1982, which took effect on 15 March 1982.

After the budgetary authorities had allocated a new post in the normal B stream to the Economic and Social Committee and the latter had assigned it to the Secretariat of Group III, the Secretary-General of the Economic and Social Committee wished to clarify a situation which had become confused and made it impossible to assign anyone to the post of secretarial assistant in Directorate A. Therefore, according to the Economic and Social Committee — whose version of the facts is challenged by the applicant — it was in order to bring the organizational plan (the list of posts) as closely as possible into line with the existing state of affairs in the interests of the service and having regard to Mrs Hansen's request for a permanent transfer from Directorate A, that the Secretary-General decided:

(i) to amend the detailed list of posts in the general secretariat by Decision No 306/83/A of 1 July 1983 by exchanging two posts, that is to say by classifying as a normal B 5/B 4 post the secretarial B 5/B 4 post allocated to Group III and, conversely, by classifying as a secre-

tarial B 5/B 4 post the normal B 5/B 4 post allocated to the Mail/Records/Library/Documentation Department;

(ii) to assign Mrs Barbesta to the normal B 5/B 4 post thus allocated to the secretariat of Group III (Decision No 316/83/A of 1 July 1983);

(iii) to transfer Mrs Hansen, in her existing capacity as a secretarial assistant, to the secretarial B 5/B 4 post now allocated to the Mail/Records/Library/Documentation Department (Decision No 317/83/A of 1 July 1983).

It is that decision which the applicant contests, but only in so far as she is still designated therein as a secretarial assistant. She does not contest the transfer itself.

A complaint submitted by the applicant on 18 July 1983 was rejected by the Secretary-General on 11 October 1983.

Finally, the Economic and Social Committee's budget for 1984 made it possible to allocate a normal B 5/B 4 post to the Mail / Records / Library / Documentation Department. In accordance with an undertaking given by the Secretary-General, the applicant was appointed to that post as an administrative assistant (a normal B post) by a decision of 24 May 1984 which the Economic and Social Committee referred to for the first time in its rejoinder.

II — Written procedure and conclusions of the parties

By an application received at the Court Registry on 11 January 1984, the applicant brought an action against the Economic and Social Committee. According to her conclusions in their final version, the *applicant* claims that the Court should:

(i) declare that Decision No 317/83/A of the Secretary-General of the Economic and Social Committee of 1 July 1983 is void in so far as the applicant is still designated therein as a secretarial assistant, but without calling in question the validity of the transfer itself;

(ii) declare that the Economic and Social Committee must adopt the measures needed to regularize her situation, namely by "specifying that the applicant is an administrative assistant in Career Bracket B 4/B 5 in the normal B stream";

(iii) declare void Decision No 306/83/A of 1 July 1983 amending the detailed list of posts;

(iv) order the verification, by hearing oral testimony, of a number of facts relating to the assignment of the applicant to the Records Department;

(v) order the defendant to submit a number of documents, in particular those relating to the problems posed by careers in the normal B stream and the secretarial B stream;

(vi) order the Economic and Social Committee to pay the costs.

The *Economic and Social Committee* contends that the Court should:

(i) dismiss the application as unfounded;

(ii) order the applicant to pay the costs.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it requested the applicant and the Economic and Social Committee to reply to a question before the hearing.

III — Submissions and arguments of the parties

A — Admissibility

The Economic and Social Committee raised three objections of inadmissibility.

1. Action against an internal measure which may not be contested

(a) According to the *defendant,* the applicant is in fact calling in question the detailed list of posts and the amendment thereof, in so far as she claims that the contested decision should be rectified and that she should be appointed an administrative assistant (in a normal B post), which she has never been and which was impossible under the budget.

However, the Court has consistently held that the detailed list of posts in an institution cannot be contested by legal proceedings.

(b) The *applicant* points out that she is asking only for her position to be regularized, that is to say, for a transfer to a normal B post as an administrative assistant, and she states that she is indeed contesting the amendment of the detailed list of posts on the grounds set out below.

2. Lack of an interest in bringing an action

(a) In the opinion of the *Economic and Social Committee,* the applicant has no interest in bringing an action; she has always been a secretarial assistant (occupying a secretarial B post), she could be transferred in that capacity to the Mail/Records/Library/Documentation Department and she was not entitled to a normal B post. Moreover, her rights to promotion in the normal B stream are not affected by the contested decision, since it is still open to the applicant in the course of her career to apply for any vacancy which may arise in that stream.

(b) The *applicant* maintains, on the contrary, that her interests were adversely affected since she was eligible for appointment to a normal B post as an administrative assistant, that the reserve list on which she was placed, for future recruitment in the normal B stream, is not of indefinite duration, that it will be possible to assess her only in her capacity as a secretarial assistant and that her career will not develop smoothly in the normal B stream. According to the Court of Justice, an official is entitled to know in advance the significance of the factors which may influence his career.

3. Delay in instituting proceedings

(a) Finally, according to the *Economic and Social Committee,* the application is out of time since the applicant, who was placed at the disposal of the Mail / Records / Library / Documentation Department with effect from 11 March 1982, never raised any objections to the effect that her duties did not correspond to her grade until she lodged a complaint on 18 July 1983.

(b) The *applicant* maintains that she was under no obligation to lodge a complaint against a preliminary, transitional measure which, as such, did not adversely affect her.

B — Substance

The applicant relied on four submissions in support of her initial application. Subsequently, on the basis of Article 42 (2) of the Rules of Procedure and having regard to the fact that the Economic and Social Committee produced a copy of Decision No 306/83/A amending the detailed list of posts, the applicant raised three further submissions in her reply.

1. The first submission is concerned with the alleged infringement of (i) the Decision of the Bureau of 28 April 1964 and Decision No 657/74/A of the Economic and Social Committee of 27 March 1974 describing the duties and powers attaching to each post and, (ii) the second subparagraph of Article 5 (4) of the Staff Regulations.

(a) The *applicant* maintains that the duties assigned to her, as set out in the vacancy notice relating to the post occupied by her, are unquestionably those of an administrative assistant, not of a secretarial assistant.

Since its creation, the post of administrative assistant in the Records Department has been a normal B post, as is clear from Vacancy Notice No 31/76 of 14 August 1976.

Accordingly, the appointing authority could not appoint her to a post of administrative assistant and continue to designate her a secretarial assistant.

(b) The *Economic and Social Committee* recites the reasons justifying the amendment of the detailed list of posts and states that by assigning the applicant to a post of secretarial assistant which had fallen vacant in the Mail/Records/Library/Documentation Department the Secretary General did not intend to amend the nature of the duties pertaining to that department. Furthermore, as regards the starting grades in Category B, a degree of "mobility" is necessary both in the interests of the service and in the interests of the officials themselves, and the tasks of coordination in the operational directorates do not differ substantially from those performed in the Records Department.

2. The second submission is concerned with the alleged disregard of Vacancy Notice No 31/76 of 14 April 1976, which described the duties attaching to the post of administrative assistant in the Mail/Records/Library/Documentation Department.

In support of this submission, the applicant relies on the same arguments as those put forward in support of her first submission and the defence pleaded by the Economic and Social Committee is also the same.

3. The third submission is concerned with the alleged disregard of the organizational plan for 1983.

(a) The *applicant* maintains that the detailed list of posts made provision for the allocation to the Records Department of a B 4/B 5 post of administrative assistant, not a post of secretarial assistant. The applicant put forward this submission at a time when she was unaware that the detailed list of posts had been amended by the aforesaid decision of 1 July 1983.

(b) The *Economic and Social Committee* states that the detailed list of posts could not have been disregarded since the applicant's posting corresponds precisely to the detailed list of posts, as amended by the decision of 1 July 1983.

4. The fourth submission, put forward in the alternative, is concerned with the alleged infringement of Article 7 (1) of the Staff Regulations, which provides that each official is to be assigned to a post in his category or service which corresponds to his grade.

(a) The *applicant* maintains that the normal B, technical B and secretarial B streams are in practice distinct categories and that in those circumstances there cannot be any mobility between them. Accordingly, after successfully taking part in a normal B competition and being assigned to a post of administrative assistant, she should have been accorded the status of administrative asssistant, not that of secretarial assistant. Moreover, she was adversely affected by that posting since the secretarial B stream leads no further than to Career Bracket B 2/B 3, whilst the normal B stream leads to Grade B 1.

(b) In reply the *Economic and Social Committee* states that the post in the Mail / Records / Library / Documentation Department corresponds to the applicant's category and grade, inasmuch as she is an official in Career Bracket B 5/B 4, and that the tasks entrusted to the applicant in that department do not involve a greater degree of responsibility than those formerly performed by her in the secretarial B 5/B 4 post. The applicant's grade therefore corresponds to her post. Moreover, the normal B and the secretarial B streams are not categories but correspond to "basic posts". Furthermore, if that were not the case, the applicant would have lost all right to be appointed to a normal B post.

5. The fifth submission (first pleaded in the reply) is concerned with the alleged infringement of Article 25 of the Staff Regulations

(a) The *applicant* charges the Economic and Social Committee with failing to publish, post or bring to her attention the decision of 1 July 1983 amending the detailed list of posts, which adversely affects her.

(b) The *Economic and Social Committee* contends that the detailed list of posts in an institution, which is adopted in order to ensure the proper functioning of that institution, does not constitute a decision relating to a specific individual within the meaning of Article 25 of the Staff Regulations and need not therefore be published or posted.

6. In her sixth submission (first pleaded in the reply) the applicant contends that the Secretary-General lacks the power to amend the detailed list of posts.

(a) The *applicant* maintains that the Secretary-General is empowered only to adopt, in the interests of the service, measures implementing the initial decision laying down the detailed list of posts and that he cannot act for the Bureau of the Economic and Social Committee, which alone has the power to adopt the organizational plan and to amend it.

(b) In reply the *Economic and Social Committee* states that by Decision No 72/83/A of 23 February 1983 certain powers were delegated to the Secretary-General to amend the organization of the secretariat in the interests of the service. The Secretary-General did so within the limits of the powers conferred upon him by the Rules of Procedure and in particular by Article 57 thereof.

7. The seventh submission (first pleaded in the reply) is concerned with an alleged misuse of powers vitiating all the aforesaid decisions relating to the amendment of the detailed list of posts, Mrs Barbesta's secondment and the applicant's transfer.

(a) The *applicant* contends that the voluntary renunciation by the Economic and Social Committee of a post in the normal B stream, the measures adopted in relation to Mrs Barbesta, which can be explained by reference not to the interests of the service but to a "policy based on personalities", and the secrecy surrounding the measures adopted are factors which point to a misuse of power. The applicant offers to call witnesses in support of that contention.

(b) The *Economic and Social Committee* emphatically rejects that argument and stresses that all the decisions adopted were taken in the interests of the service, having regard to the provisions adopted by the Bureau and to budgetary constraints, and that the applicant's contentions are factually incorrect.

At the same time, the Economic and Social Committee pointed out that as soon as a post became available under the budget the applicant was, by a decision of 24 May 1984, appointed an administrative assistant, that is to say she was assigned to a normal B post.

IV — Replies given by the parties to a question from the Court

By a letter of 27 September 1984 the Court requested the parties to reply before the hearing to the following question:

"Does the decision of 24 May 1984 appointing Mrs Hansen an administrative assistant (in a normal B post) satisfy the applicant's claim in its entirety? If not, what precisely, since the adoption of that decision, is the purpose of the proceedings or, in other words, to what extent does the applicant still have an interest in continuing the proceedings after the adoption of the decision of 24 May 1984?"

By a letter of 12 October 1984 the applicant replied as follows:

"(a) Since the decision in question was adopted on 24 May 1984 and not on 1 July 1983, the date on which Decision No 317/83/A was adopted, the applicant considers that, in view of her interpretation of the lack of interpenetrability [sic] between the normal B and the secretarial B streams, the minimum qualifying period for her promotion did not start to run until 24 May 1984, instead of 1 July 1983.

(b) The decision of 24 May 1984 contains an ambiguity which the applicant has sought to remove by submitting a request to the appointing authority on 20 July 1984 which has so far failed to evoke any response (Annex I)."

V — Oral procedure

At the sitting on 25 October 1984 oral argument was presented by the

following: Mr Slusny, for Mrs Hansen, and Mr Simond, acting as Agent, for the Economic and Social Committee.

The Advocate General delivered his opinion at the sitting on 29 November 1984.

At the hearing Counsel for the applicant contended that the decision of 24 May 1984 did not satisfy the applicant's claim in full for two reasons:

First, the minimum qualifying period for her promotion did not start to run until 24 May 1984, instead of 1 July 1983:

Secondly, her appointment, in its present form, provides no guarantee that she may not one day be forced to compete with officials holding secretarial B posts.

As regards those two points, the representative of the Economic and Social Committee replied as follows:

According to the provisions of the Staff Regulations, as consistently applied by the Economic and Social Committee, normal B and secretarial B constitute a single stream with the result that seniority acquired in a secretarial B post is normally taken into account in full with regard to further advancement in the normal B category.

The problem of competition between the applicant and other officials in the secretarial B stream no longer arises since she is now in the normal B stream, whilst officials classified in the secretarial B stream will have to pass a competition in order to be assigned to a normal B post. The applicant is therefore in the same position as all other officials in the same category at the Economic and Social Committee.

Decision

1 By an application lodged at the Court Registry on 11 January 1984, Marie-Reine Hansen, née Meyer, an official at the Economic and Social Committee, brought an action for:

(i) a declaration that Decision No 317/83/A of 1 July 1983 whereby the Secretary-General of the Economic and Social Committee transferred the applicant, in her existing capacity as a secretarial assistant, to a new secretarial B 5/B 4 post, allocated to the Mail/Records/Library/Documentation Department, is void in so far as she is still designated in that decision as a secretarial assistant;

(ii) a declaration that Decision No 306/83/A of 1 July 1983 whereby the Secretary-General of the Economic and Social Committee amended the detailed list of posts in that institution is void;

(iii) a declaration that the Economic and Social Committee must adopt the measures needed to regularize the applicant's situation, namely by "specifying that the applicant is an administrative assistant in Career Bracket B 4/B 5 in the normal B grade".

2 An examination of Section A of Annex I to the Staff Regulations, which sets out the basic posts and career brackets in each category and in the language service, reveals that Career Brackets B 2/B 3 and B 4/B 5 contain three types of post, namely administrative assistant, technical assistant and secretarial assistant. Those types of post correspond to three different "streams" within Category B: the normal B stream, which is for officials qualified to carry out administrative and office work; the secretarial B stream, which is for officials involved essentially in secretarial work and typing; and finally the technical B stream, which is for officials engaged upon work of a technical nature.

3 It is common ground that the above distinction has no effect with regard to the financial position of those concerned or their status under the Staff Regulations. However, the career prospects of officials in the normal B stream are better since they have more opportunities for advancement from Career Bracket B 4/B 5 to Career Bracket B 2/B 3 and only they can apply for promotion to Grade B 1.

4 Mrs Hansen, who entered the service of the Economic and Social Committee as a typist in Grade C 5 on 4 June 1968, was assigned on 11 November 1969, as a secretary, to Division B. From 1 June 1973 to 1 November 1978 she was assigned, as a secretary, to the Mail/Records/Library/Documentation Department. In 1978 she was appointed a principal secretary in Directorate A and advanced to grade C 1. She successfully took part in Competition No B/25/74, organized in order to constitute a reserve of administrative assistants (normal B posts). In the absence of a normal B vacancy, however, she applied on 18 December 1979 for a post of secretarial assistant (a secretarial B post) in the secretariat of Directorate A. She was appointed to that post with effect from 1 February 1980.

5 By a decision of 11 March 1982, which was adopted at the applicant's request, she was placed at the disposal of the Mail/Records/Library/Documentation Department.

6 In order to bring the list of posts as closely as possible into line with the existing state of affairs, and having regard to Mrs Hansen's request for a permanent transfer to that department, the Secretary-General adopted two decisions on 1 July 1983:

The first decision, No 306/83/A, amended the detailed list of posts in the general secretariat by allocating a new secretarial B 5/B 4 post to the Mail/Records/Library/Documentation Department, as a result of an exchange of posts;

The second decision, No 317/83/A, transferred Mrs Hansen, in her existing capacity as a secretarial assistant, to that new post.

7 It is those two decisions which are the subject-matter of these proceedings, the second decision only in so far as it maintains Mrs Hansen's designation as a secretarial assistant. The transfer itself is not contested.

8 Finally, in a decision of 24 May 1984, which was referred to by the Economic and Social Committee for the first time in its rejoinder, the Secretary-General took account of the fact that the Economic and Social Committee's budget for 1984 made it possible to allocate a new normal B 5/B 4 post to the Mail/Records/Library/Documentation Department and proceeded to appoint Mrs Hansen to that post as an administrative assistant, that is to say she was appointed to a normal B post.

The claim for a declaration that Decision No 317/83/A is void in so far as it maintains the applicant's designation as a secretarial assistant

9 After the adoption of the aforesaid decision of 24 May 1984, appointing her to a normal B post as an administrative assistant, the applicant maintained, both in her reply to a written question put to her by the Court and at the hearing, that she still had an interest in continuing the proceedings since that decision did not satisfy her claim in full for two reasons:

First, the minimum qualifying period for her promotion did not start to run until 24 May 1984, instead of 1 July 1983.

Secondly, her appointment, in its present form, provided no guarantee that she might not one day be forced to compete with officials in the secretarial B stream.

10 The Economic and Social Committee, which did not reply in writing to the question put to it by the Court, stated at the hearing that, in the first place, in accordance with the provisions of the Staff Regulations as consistently applied by the Economic and Social Committee, seniority acquired in a secretarial B post was taken into account in full with regard to further advancement in the normal B stream; secondly, the problem of competition between the applicant and officials in the secretarial B stream no longer arose, since she was in the normal B stream and officials classified in the secretarial B stream would have to pass a competition in order to be assigned to a normal B post. The applicant was therefore in the same position as all other officials in the normal B stream at the Economic and Social Committee.

11 The Court considers it appropriate to take formal note of those statements and to declare that, as a result of the adoption of the decision of 24 May 1984, the applicant's claim has been satisfied in full. In those circumstances the claim for a declaration that Decision No 317/83/A of 1 July 1983 is void has become devoid of purpose.

The other claims made in the application

12 It follows that the claim for a declaration that Decision No 306/83/A of 1 July 1983 amending the detailed list of posts is void, which was put forward solely in order to obtain a declaration that Decision No 317/83/A is void, has also become devoid of purpose. The same is true of the claim for a declaration that the Economic and Social Committee must adopt the measures needed to regularize the applicant's situation.

Costs

13 Under Article 69 (5) of the Rules of Procedure, where it is not necessary to rule on a claim the costs are to be at the discretion of the Court.

14 It must be noted that the Economic and Social Committee did not reply in writing to the question put to it by the Court in order to ascertain whether the applicant still had an interest in continuing the proceedings after the adoption of the decision of 24 May 1984. The defendant answered that question only during the oral procedure. Since the applicant therefore remained uncertain whether she had an interest in continuing the proceedings, it is appropriate in the circumstances of this case to order the Economic and Social Committee to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Declares that it is unnecessary to give a decision on the claims set out in Mrs Hansen's application;**

2. **Orders the Economic and Social Committee to pay the costs.**

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 13 December 1984.

J. A. Pompe
Deputy Registrar

C. Kakouris
President of the Third Chamber