JUDGMENT OF THE COURT (SECOND CHAMBER)
12 MAY 1971[1]

Joseph Nagels
v Commission of the European Communities

Case 52/70

Summary

Officials — Recruitment — Probationary period — Tasks which do not constitute the extension of the work listed in the vacancy notice but which relate to the subject-matter referred to in the notice — Validity of the probationary period
(Staff Regulations of Officials, Article 34)

The fact that in the actual arrangement of the duties attaching to the post of a probationer, tasks which did not constitute the direct and necessary extension of the work listed in the vacancy notice relating to the post in question were entrusted to him cannot invalidate the probationary period where those tasks relate to the subject-matter referred to in the vacancy notice.

In Case 52/70

JOSEPH NAGELS, a former probationary official of the Commission of the European Communities, represented by H. Rolin, Advocate of the Cour d'appel, Brussels, and subsequently by M. Slusny, Advocate of the Cour d'appel, Brussels, and by B. Fabry, Advocate, 92 avenue H.-Jaspar, Brussels, with an address for service in Luxembourg at the Chambers of E. Arendt, Advocate, 34 B/4 rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Pierre Lamoureux, acting as Agent, with an address for service in Luxembourg at the offices of its Legal Adviser, É. Reuter, 4 boulevard Royal,

defendant,

Application for the annulment of a decision to dismiss the applicant made on 11 February 1970,

1 — Language of the Case: French.

THE COURT (Second Chamber)

composed of: A. Trabucchi (Rapporteur), President of Chamber, P. Pescatore and H. Kutscher, Judges,

Advocate-General: A. Dutheillet de Lamothe
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts which form the basis of this action may be summarized as follows:
The applicant, who worked as an inspector at the Office national des debouchés agricoles et horticoles (National Agricultural and Horticultural Marketing Bureau) in the Belgian civil service, was appointed a probationary official of the Community on 1 March 1969 was classified in Grade B1 as a Principal Administrative Assistant at the Directorate-General for Agriculture. This appointment was made pursuant to Article 29 (2) of the Staff Regulations after a competition procedure under Article 29 (1) had produced no results. The vacancy notice for the post in question described the duties relating thereto thus:

> 'Performing, within the context of general instructions, particularly difficult and complex office work concerning (the Dutch text says "met name" [namely] instead of "concerning");
> — the testing of species and varieties of agricultural and horticultural plants;
> — the arrangement, for the purposes of comparison, of fields of those plants;
> — carrying out the inspection of those fields.'

The first report at the end of the probationary period of 30 July 1969 found serious inadequacies in the applicant's abilities to perform satisfactorily the duties for which he had been recruited and concluded by suggesting that the probationary period be extended for a maximum period of three months and this was in particular in consideration of the fact that 'the appointing authority would probably not be able to take the decision to dismiss the probationer in due time before the end of the probationary period of six months'.
A second probationary report dated 1 November 1969 concluded that the applicant should be dismissed because of the inadequacies already found in the first report. Since the applicant had been absent because of sickness for two months, the Commission decided to extend by the same time the additional probationary period which had been granted. The third report at the end of the probationary period which was drawn up on 19 January 1970 confirmed the previous conclusions.
On 16 February 1970, the Commission notified the applicant of its decision to dismiss him. The applicant's complaint against this decision, addressed to the

Commission on 28 April 1970, was rejected by letter of 27 July.
By an application lodged at the Court Registry on 24 August 1970, the applicant lodged an appeal against the decision of the Commission.
The written procedure followed the normal course.
The Court (Second Chamber), after hearing the report of the Judge-Rapporteur and the views of the Advocate-General, decided to open the oral procedure without a preparatory inquiry.
The parties presented oral argument at the hearing on 4 March 1971.
The Advocate-General delivered his opinion at the hearing on 1 April 1971.

II — Conclusions of the parties

The *applicant* claims that the Court should:
(1) annul the decision whereby the applicant was dismissed and, in so far as is necessary, the decision whereby his complaint against that dismissal was rejected;
(2) in the alternative, order the Commission to pay the applicant the sum of 200 000 francs as damages;
(3) in both cases, order the Commission to bear the costs of the action.
The *defendant* contends that the Court should:
— dismiss the applicant by rejecting his application in its entirety as unfounded;
— order the applicant to pay the costs.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1. Complaints that the Staff Regulations of Officials have been infringed

(a) The *applicant* accuses the Commission of having infringed Article 34 of the Staff Regulations because it did not enable him to prove during the probationary period that he possessed the necessary abilities for the post to which he was appointed. In fact, he says, as appears from the Dutch text of the vacancy notice relating to the post in question, the practical field-work was closely linked to the office work which should only have been ancillary thereto and should only have involved reports on inspections and actual experiments and not accounts of discussions during group meetings. Besides, he adds, the defendant could not have had any doubts as to his lack of experience of the tasks of composing and writing reports. The inadequacies which were pointed out in the third report with regard to certain work performed by the applicant arose either from his incomplete knowledge of French in which language he had had to write certain reports (which was irregular), or from a lack of legal education which was in no way necessary for the post in question.
The *defendant* maintains that the wording of the vacancy notice does indeed show that the office work forms the essential part of the duties relating to the post and that, to the extent to which certain tasks have technical and practical aspects, they necessarily culminate in desk work. The fact that the word 'concerning' which appears in the French version is translated by the words 'met name' in the Dutch version cannot have the effect of ascribing to that office work a subsidiary character. Moreover, the applicant was thoroughly informed of the nature of the work by the contacts which he had with the officials in the division concerned even before he submitted his application for the post.
The information supplied by the applicant on his application form both as regards his former tasks and as regards his knowledge of French entitled the defendant to believe that he possessed the necessary administrative and literary qualifications for the office work in

question, which is work corresponding to the normal duties of an official in Grade B1 and is included in the general phrase 'particularly difficult and complex office work'.

The *applicant* replies that this phrase is a stereotyped phrase with regard to B1 posts and that where writing reports is foreseen as an essential part of the performance of certain duties, this is mentioned expressly in the vacancy notice, which was not so in this case.

The applicant complains that his immediate superior did not have the necessary patience to give him time to become accustomed to his new tasks and he implies that that superior intended to engage another official and for that reason he wanted the applicant to be dismissed. The applicant expressly denies that he was informed of the nature of the work to be performed even before he submitted his application for the post. The report-writing which is mentioned in the applicant's *curriculum vitae* only concerned his research work.

The fact that the applicant stated his ability to write French as 'good' did not prevent his having difficulties in writing in that language, which is not his own, which made it even more difficult for him to perform tasks different from those to which he was accustomed.

The *defendant* answers that since the post of Principal Administrative Assistant is the highest in Grade B, no doubts can be expressed as to the fact that the applicant's duties should in fact have involved performing particularly difficult and complex office work and that the statement contained in the vacancy notice in this respect meant exactly that. Writing minutes is necessarily included in the expression 'particularly difficult and complex office work'. The Commission states that the strictly technical work to which the applicant wishes to reduce his duties is inevitably limited in a post of this kind. In fact, sampling only takes place in the period from 15 October to 15 November each year and inspecting the fields is itself work which is limited to certain times. The applicant was moreover informed before his recruitment that he would only have to be away on mission for six weeks a year at the most.

The meetings on which the applicant was instructed to write a report concerned problems which were suited to his training and technical experience.

As regards writing in French, the defendant observes in addition that in a *curriculum vitae* submitted on 13 December 1966, the applicant wrote that he was bilingual in Dutch and French and that, besides, when he wrote some minutes in Dutch which were afterwards transcribed into French the results were no better. But the shortcomings of which the applicant is accused are essentially fundamental shortcomings and in particular his inability to distinguish the essential factors, to adopt a definite viewpoint with regard to them, to write reports and to analyse and condense the results of an experts' discussion or of a field inspection.

All the work entrusted to the applicant came within a technical subject of which the latter should have had thorough knowledge through his training and experience.

The fact that the applicant's probationary period was twice extended is proof of the great patience shown towards him. As for the official whom, the applicant suggests, it was desired to appoint in place of him, the defendant stresses that that official was put on the list of those qualified to enter the competition for a post in A7-A6 in October 1969, the time when, the applicant claims, it was decided to get rid of him. Moreover, since the applicant has not made a submission of misuse of powers in his application, this argument is inadmissible.

(b) In addition the *applicant* complains that the contested decision was not preceded by the opinion of the Reports Committee laid down in Article 9 (5) (a) of the Staff Regulations of Officials.

Moreover, this decision was out of time because it was preceded by a probation report which was itself out of time in disregard of Article 34 of the Staff Regulations.

The *defendant* claims that according to Article 9 of the Staff Regulations, the appointment of a Reports Committee is optional and that therefore no complaint can be made that the Commission did not appoint one. As for the report at the end of the probationary period, the defendant observes that it was drawn up in the first place on 30 July 1969 and that therefore Article 34 was complied with. The two following reports were drawn up at the end of two additional periods. As for the date of the decision to dismiss the applicant, Article 34 does not lay down compulsory time-limits and in addition that date did not affect the applicant adversely.

2. *The claim for damages*

The *applicant* maintains that the discrepancy between the tasks laid down in the vacancy notice, in particular if the Dutch text, which is authentic, is taken into consideration, and those which were given to the applicant during his probationary period, constitutes a wrongful act or omission which caused him damage. In fact, after he was asked to leave his post in the Belgian civil service, the applicant claims that his dismissal was humiliating and calculated to have an unfavourable influence on the development of his later career in the Belgian civil service where he resumed his former duties. The applicant assesses the resulting material and non-material damage at BF 200 000.

The *defendant* objects that, as appears from what it pointed out in the context of the first submission, the wording of the vacancy notice which the applicant is criticizing is in no way defective, that he was previously informed of the tasks for which he would be responsible and that he had led the defendant to believe that he in fact possessed all the necessary qualifications.

Grounds of judgment

[1] By application lodged on 24 August 1970, the applicant has requested the annulment of the decision to dismiss him of which the Commission notified him on 16 February 1970.

I — The complaints concerning the validity of the probationary period

[2] The applicant complains that the Commission did not enable him to show during the probationary period that he possessed the necessary ability for the post to which he had been appointed, in accordance with Article 34 of the Staff Regulations of Officials.

[3] In fact, during his probationary period, the applicant claims he was entrusted essentially with office work, although the vacancy notice relating to the post in question emphasized the technical and practical aspects of the duties involved therein.

[4] The vacancy notice relating to the post in question provided as follows:

'*Nature of the duties:* Principal Administrative Assistant Performing, within the context of general instructions, particularly difficult and complex office work concerning (Dutch version: "namely"):

— the testing of species and varieties of agricultural and horticultural plants;

— the arrangement, for the purposes of comparison, fields of those plants;

— carrying out the inspection of those fields.

Necessary qualifications:

— Secondary school level education evidenced by a certificate or an equivalent level of experience;

— knowledge of plant biology;

— thorough knowledge of methods of testing and sampling seeds and plants;

— experience in the spheres of seeds and plants.'

[5] Although the way in which that notice described the duties involved in the applicant's post (in particular in the Dutch version thereof which is his mother tongue) and above all the necessary qualifications might give the impression that the office work was supposed to be closely connected with the practical work relating to actual experiments, it is difficult to believe that the applicant, who had had several contacts with the branch in question before he submitted his application for the post, had been unable to form quite an accurate idea of what he could expect in the post in question.

[6] The first report at the end of the probationary period dated 30 July 1969 stated that Mr Nagels 'knows his subject well' but pointed out inadequacies in particular as regards his ability to draft satisfactory reports relating to working sessions and to field visits in which he had to take part and to distinguish between the essential features and the minor details.

[7] In his observations on that report, the applicant stressed the technical nature of his training, and whilst he considered that the assessment of his ability to fulfil the requirements of a post in B1, which was as a whole unfavourable,

was unjustified, he acknowledged that the criticisms of his drafting and interpretation of written documents were well founded.

8 The probation report of 1 November 1969 confirmed the previous report.

9 The note attached to the probation report of 19 January 1970 specified all the tasks with which the applicant had been entrusted from the beginning of December 1969 and gave an unfavourable appraisal of the results of the work which Mr Nagels had performed in this respect.

10 In his observations of 27 January 1970, Mr Nagels, whilst complaining that his actual work fell into a context which was more legal than technical and that 75% thereof fell outside the description of 'test fields' and although he stated that he entirely rejected the findings of that report, acknowledged that he still needed some time, on the one hand to familiarize himself with the many aspects of the work which were not strictly technical and practical which were required of him and in which he had no experience and on the other, 'to reach the European standard' in the performance of the administrative work which was more strictly linked to the practical field experiments.

11 It emerges from the file that the Commission entrusted the applicant *inter alia* with technical tasks corresponding to his training and specific occupational experience, although to a lesser extent than the applicant might have expected.

12 The assessment of the probation reports as regards the technical abilities of the applicant in his specific subject is favourable.

13 It appears therefore that the Commission gave the applicant the opportunity to show his technical abilities.

14 The fact that in the actual arrangement of the duties attaching to the post in question office work such as the writing of minutes of meetings which did not constitute the direct and necessary extension of field work was given to the applicant cannot invalidate his probationary period since those tasks relate to the subject-matter referred to in the vacancy notice.

15 Moreover, the applicant, in spite of his recognized competence in his own technical speciality, also revealed some inadequacies in performing office duties which were very closely linked to his practical field work.

16 By twice extending the normal probationary period of the applicant, the defendant showed understanding towards Mr Nagels by giving him time to

become accustomed to his office duties, for which he admitted that he was not appropriately trained.

17 During that period, several tasks were entrusted to the applicant who was put in a position to show his capacity to adapt himself to his new duties.

18 The fact that the time thus available to the applicant was not sufficient, as he himself admits, for him to reach a standard compatible with his post, cannot invalidate the regularity of the probation period in question.

19 In these circumstances, the abovementioned complaint is unfounded.

II — Complaints concerning the procedure for the adoption of the decision to dismiss the applicant

20 The applicant complains moreover that the contested decision was not preceded by the opinion of the Reports Committee and was taken belatedly.

21 Since it is not compulsory to set up a Reports Committee as provided in Article 9 of the Staff Regulations, it cannot be complained that the Commission has not yet made use of its option to set up this Committee.

22 Article 34, which makes provision for the case in which an official's appointment is brought to an end following the probation period, does not lay down any compulsory time-limit for the adoption of that decision.

23 Since the last additional period of probation granted to the applicant ended on 31 January 1970, the Commission, by adopting on 11 February 1970 its decision to dismiss him and by notifying him to this effect on the following 16 February, acted within a reasonable period of time.

24 Therefore the complaints of the applicant are unfounded.

III — The claim for damages

25 The applicant maintains that the Commission, by giving him tasks during his probationary period which were largely different from those laid down in the vacancy notice, has committed a wrongful act whch caused him damage.

26 He claims that the decision to dismiss him was in fact of a humiliating nature and likely to have an unfavourable influence on the subsequent progress of his career in his national civil service.

27 It follows from the foregoing that underlying the recruitment of Mr Nagels by the Commission there may have been a misunderstanding on the part of Mr Nagels as to the nature and standard of the duties involved in the post in question and on the part of the Commission as to the nature of the applicant's knowledge and experience.

28 However in view of the applicant's knowledge of French and the contacts which he had had with the branch under which the post in question comes, any ambiguity in the wording of the Dutch version of the vacancy notice is not sufficient to establish that the conduct of the Commission was in fact likely to mislead a prudent person as to the nature of the duties involved in the post in question.

29 On the other hand, some phrases which appeared in the *curriculum vitae* drawn up by the applicant on 24 February 1968 such as 'checking the application of EEC legislation and standards concerning the import and export of agricultural and horticultural products, the preparation of material for meetings, the drawing up of working documents' were likely to mislead the Commission as to Mr Nagels's experience in the performance of general office duties.

30 In these circumstances and also in view of the considerations stated above in relation to the first submission the Commission's liability to the applicant must be ruled out.

Costs

31 The applicant has failed in his application.

32 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

33 However, under Article 70 of the Rules of Procedure, institutions shall bear their own costs in proceedings commenced against them by servants of the Communities.

34 Moreover, under Article 69 (3), the Court may order that the parties bear their own costs in whole or in part where the circumstances are exceptional.

35 As has been stated above, a misunderstanding between the Commission and Mr Nagels was the source of the latter's recruitment and therefore of the present proceedings.

6 In this circumstance, it is just to order the defendant to pay one half of the costs incurred by the applicant.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Communities;
Having regard to the Protocols on the Statute of the Court of Justice;
Having regard to the Staff Regulations of Officials of the European Communities, especially Articles 9, 34 and 91;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application as unfounded;**

2. **Orders the applicant to bear one half of the costs which he has incurred and the defendant to bear the remainder of the costs incurred by the parties.**

Trabucchi Pescatore Kutscher

Delivered in open court in Luxembourg on 12 May 1971.

A. Van Houtte
Registrar

A. Trabucchi
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE DELIVERED ON 1 APRIL 1971[1]

Mr President,
Members of the Court,

Mr Nagels is an official of Belgian nationality. Until 1969 he performed the duties of an inspector at the Office National Belge des Débouchés Agricoles et Horticoles.

He applied for a post of Principal Administrative Assistant, Grade B 1 in the departments of the Commission, in the Directorate-General for Agriculture in

1 — Translated from the French.