JUDGMENT OF THE COURT (First Chamber)
6 February 1986 *

In Case 143/84

Androniki Vlachou, a probationary official of the Court of Auditors of the European Communities, residing at 21 rue Bertels, Luxembourg, represented and assisted by Victor Biel of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 18 A rue des Glacis,

applicant,

v

Court of Auditors of the European Communities, represented by its Secretary, Jean-Aimé Stoll, acting as Agent, and by Henry Marty-Gauquie, acting as Deputy Agent, assisted by Lucette Defalque of the Brussels Bar, with an address for service in Luxembourg at its seat, 29 rue Aldringen,

defendant,

supported by

(1) **Mr K**, an official of the Court of Auditors, represented and assisted by Jean Noël Louis of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Decker, 16 avenue Marie-Thérèse,

(2) **Mr D**, an official of the Court of Auditors, represented and assisted by Guy Harles of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 34 B rue Philippe-II,

interveners,

APPLICATION for the annulment of the decision of the Selection Board in Internal Competition No CC/LA/20/82 to admit Mr K to that competition, its decision to include Mr K in the list of suitable candidates in that competition and its decision appointing him to a post of reviser/principal translator in the Language Service of the Court of Auditors,

* Language of the Case: French.

THE COURT (First Chamber)

composed of: R. Joliet, President of Chamber, G. Bosco and T. F. O'Higgins, Judges,

Advocate General: C. O. Lenz
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 25 November 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 6 June 1984, Mrs Androniki Vlachou, a probationary official of the Court of Auditors of the European Communities, brought an action for the annulment of a decision of 25 November 1983, adopted by the President of the Court of Auditors in his capacity of appointing authority, appointing Mr K to a post of Greek-language reviser/ principal translator in the Language Service of the Court of Auditors.

2 The decision was adopted on the basis of the list of suitable candidates drawn up by the Selection Board in Competition No CC/LA/20/82; an internal competition based on qualifications and tests. Mr K was first on that list.

3 A complaint submitted by Mrs Vlachou on 17 February 1984 was rejected by a decision of the appointing authority dated 9 March 1984.

4 In her application, Mrs Vlachou submits that the contested decision must be annulled because it was adopted at the end of a competition procedure vitiated by several breaches of general principles of law and by infringements of certain provisions of the Staff Regulations.

5 The submissions which the applicant puts forward in support of her conclusions are in particular that:

(i) the Selection Board failed to observe the entrance requirements laid down in the notice of competition;

(ii) her legitimate expectation was frustrated;

(iii) Article 5 (3) of the Staff Regulations was infringed;

(iv) the principle requiring the equal treatment of candidates was not requested.

The applicant also put forward alternative and supplementary submissions but did not enlarge upon them in her pleadings.

6 The Court of Auditors disputes both the admissibility of the action and the substance of the submissions put forward by the applicant. It claims that the application should be declared inadmissible or unfounded and that the applicant should be ordered to bear all the costs.

7 By an order of the Court (First Chamber) of 14 November 1984, Mr K was granted leave to intervene in support of the defendant's conclusions. He argues that he satisfied all the entrance requirements contained in the notice of competition and that the Selection Board's proceedings were not vitiated by any irregularity, so that the decision appointing him to a post of reviser/principal translator is entirely lawful.

8 Another official of the Court of Auditors, Mr D, a member of the Selection Board in the disputed competition, was also granted leave, by an order of the Court (First Chamber) of 14 November 1984, to intervene in support of the defendant's conclusions in order to challenge one of the applicant's alternative submissions

alleging that he did not offer guarantees of impartiality between the candidates. Mr D maintains that that assertion is quite gratuitous and unproven.

9 As regards the admissibility of the application, the Court of Auditors argues that it is out of time because the applicant did not challenge the Selection Board's decisions within the prescribed period, in particular the list of suitable candidates published on 20 July 1983.

10 Mrs Vlachou replies that the decisions of a Selection Board cannot be challenged as such since a Selection Board is not a body empowered to take decisions which are binding on officials.

11 It should be pointed out that a decision whereby a Selection Board establishes a list of suitable candidates is a measure preparatory to an appointment decision so that its illegality may only be pleaded in an application challenging the decision in relation to which it constituted a preparatory step. That conclusion cannot be upset by the argument that the appointing authority is bound by the results of the competition as laid down in the list of suitable candidates; although, as a general rule, the appointing authority must observe the order in which the names of suitable candidates are listed, it may nevertheless depart from that order provided that it explains its decision clearly and in full. The action is therefore admissible.

12 Of the various submissions put forward by Mrs Vlachou, the Court should examine first of all that alleging that the Selection Board acted in breach of the principle of equal treatment inasmuch as, *inter alia*, it did not award the applicant the correct number of points for her practical experience, which was twice as long as that of the other candidate, probably because it misjudged the value of the documents provided.

13 According to paragraph VI.A.2.(b) of the notice of competition, the practical experience defined in paragraph VI.A.1.(a), namely at least six years' practical experience at senior level, in work related to the post to be filled, was to be awarded a maximum of 50 marks.

14 As is stated in paragraph 6 (marking of qualifications) of the minutes of the Selection Board's first meeting held on 29 June 1983, the Selection Board decided that the maximum number of 50 marks which could be awarded for practical experience under the terms of the notice of competition should be divided as follows:

A maximum of 36 marks (6 marks for each year and 0.5 marks for each month) could be awarded for experience gained at the Court of Auditors or in other Community institutions;

A maximum of 14 marks (2.4 marks for each year and 0.2 marks for each month) could be awarded for experience gained outside the Community institutions.

15 In accordance with those criteria, Mrs Vlachou's experience of nine years and six months gained outside the Community institutions was not taken into account to the extent to which it exceeded the period attracting the maximum of 14 marks, while all of Mr K's 'outside' experience of five years and two months was taken into account.

16 Such an allocation of marks awardable to candidates according to the nature of their practical experience would not be open to challenge if it had been decided before the Selection Board examined the candidates' files. It is for the Selection Board to define the criteria for the marking of qualifications in the light of the importance which, on the basis of an assessment which must by its nature be discretionary, it attaches to those qualifications in relation to the requirements of the post to be filled.

17 In this case, however, as is clear from the minutes of the Selection Board's meeting held on 29 June 1983, not only were the criteria for the assessment of qualifications determined after the Board had examined those qualifications in order to ascertain whether the candidates satisfied the entrance requirement referred to in paragraph V.2. of the notice of competition, namely whether they had at least six years' practical experience at senior level in work related to the post to be filled, but those criteria were also determined in such a way that Mrs Vlachou's position was not properly established. As the Court of Auditors indicated at the hearing, the Selection Board took the view that the evidential value of certain documents submitted by Mrs Vlachou was open to doubt.

18 It should be pointed out in this regard that, although the Selection Board was entitled to assess the evidential value of those documents in order to decide whether or not it could use them, and where necessary to ask the applicant to provide other evidence of her practical experience, once it had accepted the documents it had to evaluate them in the same way as the other documents produced by the candidates for the purpose of proving their practical experience outside the Communities.

19 It must therefore be held that by adopting, after examining the qualifications of candidates, a system of allocating marks for practical experience which was objectively of such a nature as to produce an undervaluation of certain certificates produced by one of the candidates, the Selection Board acted in breach of the general principle that candidates in a competition should be treated equally.

20 The illegality vitiating the decision of the Selection Board laying down the criteria for the awarding of marks for documentary attestation of practical experience also affects the decision in which the Selection Board established a list of suitable candidates in order of preference, which the appointing authority followed for the purposes of its appointment decision.

21 Having regard to the illegality of the procedure followed in Competition No CC/LA/20/22, it is accordingly necessary to annul the decision of the President of the Court of Auditors of 25 November 1983 appointing Mr K to a post of reviser/principal translator in the Language Service of the Court of Auditors.

Costs

22 Under the terms of Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings. As the Court of Auditors has failed in its submissions, it must be ordered to pay the costs. Since the applicant has not claimed any order as to costs as regards the interveners, they must be ordered to pay only their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Annuls the decision of the President of the Court of Auditors of 25 November 1983 appointing Mr K to a post of reviser/principal translator in the Language Service of the Court of Auditors;

(2) Orders the Court of Auditors to pay the costs;

(3) Orders the interveners to pay their own costs.

Joliet Bosco O'Higgins

Delivered in open court in Luxembourg on 6 February 1986.

P. Heim
Registrar

R. Joliet
President of the First Chamber