JUDGMENT OF THE COURT (Third Chamber)
23 April 2002 *

In Case C-62/01 P,

Anna Maria Campogrande, Commission of the European Communities, Brussels (Belgium), represented by A. Krywin, avocat, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 5 December 2000 in Case T-136/98 *Campogrande* v *Commission* [2000] ECR-SC I-A-267 and ECR II-1225, seeking to have that judgment set aside in part, a finding that there was an act of sexual harassment and an order against the Commission of the European Communities for compensation for the non-material damage resulting from that wrongful conduct,

* Language of the case: French.

the other party to the proceedings being:

Commission of the European Communities, represented by C. Berardis-Kayser, acting as Agent, assisted by D. Waelbroeck, avocat, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Third Chamber),

composed of: F. Macken, President of the Chamber, J.-P. Puissochet (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 24 January 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 February 2001, Ms Campogrande appealed under Article 49 of the Protocol on the Statute of the Court of Justice of the EC and the corresponding provisions under the ECSC and EAEC Statutes against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 5 December 2000 in Case T-136/98 *Campogrande* v *Commission* [2000] ECR-SC I-A-267 and ECR II-1225 (hereinafter 'the judgment under appeal') in so far as the Court of First Instance held it to be unproven that she had been the victim of sexual harassment and dismissed her claim for compensation.

Facts

2 Ms Campogrande is a Grade A 4 official of the Commission of the European Communities. At the time of the facts giving rise to the proceedings, she was assigned to Directorate B 'Latin America' of the Directorate-General: 'External Relations: Southern Mediterranean, Middle East and Near East, Latin America, South and South-Asia and North-South Cooperation' of the Commission. At that time Directorate B was managed by Mr A.

3 On 27 June 1997, after various informal steps, the appellant made a request for assistance to the Commission under Article 24 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') which also amounted to a request within the meaning of Article 90(1) thereof. In that request, the appellant claimed that on 27 February 1997, during a meeting, Mr

A. had given her a smack on the lower part of her back, at the same time making the following comment: 'As you can see, my directorate is very well represented by women'. According to the appellant, under Mr A.'s management, she had endured for years 'a series of comments about her person and repeated improper advances which went far beyond the bounds of a normal professional relationship'. The episode on 27 February 1997 had been the 'last straw'.

4 As the appellant had not received a response to her request for assistance, she submitted, on 21 January 1998, a complaint under Article 90(2) of the Staff Regulations against the implied rejection of her request.

5 Following that complaint, the Director-General of the Directorate-General 'Personal and Administration' (DG IX) conducted an inquiry into the allegations against Mr A. Although Mr A. admitted committing the act in question, he gave a version of the events that differed from that given by Ms Campogrande, and denied that he was guilty of sexual harassment. Furthermore, it appeared that the other persons who had attended the meeting on 27 February 1997 had no recollection of the incident and, moreover, had not heard about it.

6 The administrative inquiry was not followed by any express decision on the appellant's request for assistance and on her complaint. Nevertheless, the Director- General of DG IX sent to the applicant on 29 October 1998 the report of that inquiry which concluded that 'there was no evidence to conclude with certainty that the act in question had been committed by Mr A. with the intention of humiliating Ms Campogrande as a woman'.

7 In was in that context and before she had received the report on the inquiry that, on 20 August 1998, the appellant brought an action before the Court of First

Instance for the annulment of the implied decision rejecting her complaint of 21 January 1998 and for an order requiring the Commission to compensate her for the damage that she had suffered as a result of the contested decision.

The judgment under appeal

8 First, with regard to the lawfulness of the Commission's refusal to assist Ms Campogrande, the Court of First Instance pointed out that the administration had a duty to examine seriously, expeditiously and in total confidentiality, a complaint of sexual harassment and to inform the complainant of what action would be taken in respect of the complaint. It held that, in the case before it, as the alleged sexual harassment was contested, the Commission was obliged to open an inquiry in order to establish the facts and, if necessary, to determine the appropriate compensation. In particular, it held it to be immaterial that the appellant had not proved that she had suffered material damage as a result of the acts of harassment alleged, that it had not been established that Mr A. had intended to humiliate her and that he had subsequently apologised to her.

9 Having established that there was a duty to open and conduct an inquiry with solicitude, speed and diligence, the Court of First Instance held that to open an inquiry seven months after the lodging of the request for assistance, as the Commission had done, was not in accordance with the requirements inherent in the duty to render assistance. It also held that, even though Article 90 of the Staff Regulations did not impose a duty to rule on every request, the Commission had a duty to examine complaints of sexual harassment speedily. It further held that the fact that Mr A. had left the Commission and that therefore the alleged harassment had necessarily ceased did not remove the duty to open an inquiry speedily.

10 The Court of First Instance concluded that the Commission had infringed Article 24 of the Staff Regulations, and also Council Resolution 90/C 157/02 of 29 May 1990 concerning the protection of the dignity of women and men at work (OJ 1990 C 157, p. 3) and Commission Recommendation 92/131/EEC of 27 November 1991 on the protection of the dignity of women and men at work (OJ 1992 L 49, p. 1), and on those grounds annulled the implied decision rejecting the appellant's request for assistance.

11 However, the Court of First Instance did not rule entirely in favour of Ms Campogrande in so far as it refused to grant her application for compensation. It held, first, that the claim for compensation for non-material damage as a result of the alleged reprisals against the appellant after the submission of her complaint was inadmissible for lack of a proper pre-litigation procedure as the appellant had not mentioned those reprisals in her complaint.

12 Second, it held that the appellant's claim for an order that the Commission reconstitute her career exceeded the jurisdiction of a the Community courts, which could not issue directions to the institutions.

13 Third, as regards the non-material damage suffered by the appellant arising from the uncertainty in which the Commission had left her as to what action would be taken on her request for assistance and as to the outcome of the administrative inquiry, the Court of First Instance held that, in the circumstances of the case, the annulment of the contested decision was in itself adequate compensation. It found, furthermore, that the appellant had not suffered non-material damage.

14 The Court of First Instance therefore dismissed the claim for compensation.

The appeal

15 By her appeal, Ms Campogrande claims that the Court should:

— set aside the judgment under appeal in so far as it dismissed her claim for compensation;

— recognise the existence of the act of sexual harassment of which she was a victim, and of the resulting non-material damage;

— order the Commission to pay such damages as the Court may determine;

— order the Commission to pay the costs.

16 Ms Campogrande puts forward four grounds of appeal, alleging, first, breach of the duty to state reasons, on account, primarily, of a contradiction in the grounds of the judgment under appeal, second, infringement of the provisions of Community law and the case-law of the Court of Justice concerning new pleas in law, third, a denial of justice on the ground that the Court of First Instance did not rule on the conditions governing liability on the part of the Commission, and fourth, infringement of the rights of defence.

17 The Commission asks the Court to dismiss the appeal as inadmissible or, at least, unfounded and, in the alternative, should the Court decide to set aside the judgment under appeal, to refer the case back to the Court of First Instance for a fresh decision on the appellant's application. In any event, the Commission asks for Ms Campogrande to be ordered to pay the costs of the appeal.

Findings of the Court

The first ground of appeal, alleging breach of the duty to state reasons

18 According to the first part of this ground of appeal, the judgment under appeal is flawed by a contradiction inasmuch as, by refusing to order the Commission to pay compensation to the appellant, the Court of First Instance did not draw all the inferences from the gravity, which it acknowledged in the grounds of the judgment under appeal, of the facts complained of against the Commission.

19 As the Commission points out, however, it was for the Court of First Instance, whatever the seriousness of the facts, to determine what was the most appropriate reparation of the resulting damage. Such a determination, even supposing that it later proves to be unfounded, cannot be regarded as a contradiction in the grounds of the judgment under appeal. The first part of the first ground of appeal must therefore fail as unfounded.

20 According to the second part of that ground of appeal, the reasoning of the judgment under appeal is contradictory, insufficient and erroneous as regards the sexual harassment of which the appellant was the victim. There is a contra-

diction, in the appellant's submission, between the findings in the judgment under appeal of conduct of a sexual nature on the part of Mr A. towards the appellant and the statement by the Court of First Instance, formulated, moreover, inadequately, that she had not proved that she had been the victim of acts of sexual harassment and had suffered non-material damage.

21 It should be pointed out, however, that at paragraphs 68 to 70 of the judgment under appeal, the Court of First Instance distinguished between the non-material damage suffered by the appellant as a result of the Commission's inaction following her complaint, that damage being made good by the annulment of the contested decision, and the non-material damage pleaded by the appellant resulting from sexual harassment which she had failed to prove and which, moreover, was unrelated to the single incident on 27 February 1997, which Mr A. did not dispute.

22 Such reasoning is coherent and clear and responds exactly to the arguments put forward by Ms Campogrande. It is thus apparent that the second part of the first ground of appeal is also unfounded.

23 By the third part of the first ground of appeal, Ms Campogrande argues that there is a contradiction in the grounds of the judgment under appeal, disclosing a denial of justice, with regard to the use made by the Court of First Instance, by way of evidence, of an administrative inquiry which was criticised by it and the content of which was, moreover, disputed by the appellant.

24 It is settled law, however, that, in regard to a claim for compensation for damage, it is for the Court of First Instance alone, by virtue of Article 225 EC and Article 51 of the EC Statute of the Court of Justice, to assess the existence of the damage and the causal link between that damage and the facts giving rise to it, save where the clear sense of the evidence has been distorted (Case C-362/95 P *Blackspur DIY and Others* v *Council and Commission* [1997] ECR I-4775, paragraphs 28 and 29). In the present case, it is clear from the documents before

the Court that the Court of First Instance made use, without distorting it, of all the evidence available to it, evidence that, moreover, was consistent and was not effectively challenged by Ms Campogrande. This part of the first ground of appeal, which, effectively, amounts to a request to the Court to substitute its own assessment of the evidence for that of the Court of First Instance, must be declared inadmissible in proceedings under Article 225 EC and Article 51 of the EC Statute of the Court of Justice.

25 According to the fourth part of the first ground of appeal, the reasoning of the judgment under appeal is insufficient and erroneous inasmuch as the Court of First Instance drew the wrong inference from the appellant's marks in her staff report, using them as a basis for finding that the professional difficulties that she had encountered had not been caused by acts of sexual harassment. The point here, she claims, is that the fall, albeit temporary, in her marks is linked to the harassment that she suffered.

26 In that part of the first ground of appeal, the appellant is challenging a finding by the Court of First Instance that is not open to review. As pointed out in paragraph 24 of the present judgment, pleas alleging erroneous findings of fact by the Court of First Instance are inadmissible. The fourth part of the first ground of appeal is consequently inadmissible.

27 By the final part of the first ground of appeal, Ms Campogrande argues that the failure by the Court of First Instance to deal with the question of the existence of the sexual harassment and of the way in which the administrative inquiry was conducted discloses a denial of justice which is particularly serious given that her complaints brought into issue the general principles of respect for the rights of defence and of the protection of legitimate expectations.

28 However, it is clear from paragraph 70 of the judgment under appeal, first, that the Court of First Instance did not find that there was sexual harassment, the behaviour complained of being characterised by it as 'no more than friendly

remarks or mere coincidences' and, second, that amongst other things in the report relating to the inquiry criticised by Ms Campogrande, it accepted an account of the facts which she had drafted herself and which is annexed to the report. It is apparent, therefore, that the Court of First Instance did respond to the appellant's complaints, that it did so adequately and that accordingly the final part of the first ground of appeal is also unfounded.

The second ground of appeal, alleging infringement of the provisions of Community law and the case-law relating to new pleas in law

29 By her second ground of appeal, the appellant criticises the Court of First Instance for having infringed the provisions of Community law and the case-law of the Court of Justice relating to new pleas in law, in that it dismissed as inadmissible, for want of a proper pre-litigation procedure, her claim for compensation to make good the damage she had suffered as a result of the reprisals following the submission of her complaint.

30 Ms Campogrande argues that the claim for compensation is not a new plea in law prohibited by Article 42 of the Rules of Procedure of the Court of Justice, but a new argument in support of the pleas already contained in the application. She explains that she had always asked, both in her complaint and in her application, for compensation to make good all the damage linked to the sexual harassment of which she had been the victim. The damage resulting from the reprisals following the submission of her complaint is, she claims, only one aspect of the damage of which she had complained from the beginning.

31 The appellant asks, in addition, whether Article 42(2) of the Rules of Procedure of the Court, which allows her to raise new pleas in law in the course of the proceedings if they are 'based on matters of law or of fact which come to light in the course of the procedure', must be interpreted so as to allow her also to raise

new pleas based on a matter which arose between the lodging of the complaint and the lodging of the application before the Court of First Instance.

32 As to the last point, it must be observed that the situation in the present case is radically different from the circumstances referred to in the Rules of Procedure, since, where a new fact comes to light after the lodging of an application but before the bringing of an action before the Court of First Instance, as is the case here, it is always possible for the applicant to supplement or amend his initial complaint before lodging his application to the Court of First Instance.

33 As to the justification of that crystallisation of the content of the preliminary complaint, it must be remembered, first, that it is settled case-law that the pre-litigation procedure is intended to allow, as a priority, an amicable settlement of the differences arising between officials or other servants and the administration. In order for such a procedure to achieve its objective, it is necessary that the appointing authority be in a position to know with sufficient precision the criticisms formulated by the persons concerned against the contested decision (see, to that effect, Case 58/75 *Sergy* v *Commission* [1976] ECR 1139, paragraph 32). The Court also points out that the administration must not interpret complaints in a restrictive manner, but must, on the contrary, examine them with an open mind.

34 Next, it is settled case-law that, in actions brought by officials, although the relief sought in the application to the Court must be the same as that set out in the complaint and although the application may only contain heads of claim based on the same legal basis as that relied on in the complaint, those heads of claim may, in the non-contentious stage of the procedure, be developed by the submission of pleas and arguments not necessarily appearing in the complaint, but which are closely linked to it (Case 242/85 *Geist* v *Commission* [1987] ECR 2181, paragraph 9).

35 It follows, as Ms Campogrande argues, that the substance of the complaint is not intended to be strictly and definitively binding for the purposes of the contentious stage of the procedure, provided always that neither the legal basis nor the subject- matter of the complaint is changed in the action brought (Case 52/85 *Rihoux and Others* v *Commission* [1986] ECR 1555, paragraph 12). Thus the Court has held that, where the applicant asked in his complaint for the annulment of the implied decision rejecting his request for assistance, he must be regarded as having asked for compensation for the damage which may have been caused to him by that decision (see Case 224/87 *Koutchoumoff* v *Commission* [1989] ECR 99, paragraph 10).

36 In the present case, however, it is clear from the terms of her complaint that Ms Campogrande's specific claim for compensation was based solely on the damage arising from the improper refusal by the Commission to assist her.

37 Before the Court of First Instance, Ms Campogrande did not submit any additional pleas or arguments in support of that claim for compensation; in reality, she submitted a new claim for compensation based on a new head of damage, namely that resulting from the measures of reprisal allegedly taken against her in her department following the lodging of her complaint.

38 Even supposing that they were proved, those reprisals are not the result of the Commission's implied decision rejecting the appellant's request for assistance, which was annulled by the judgment under appeal, but the direct result of the lodging of the appellant's complaint. Consequently, even though that claim arises in the same context, it is a claim for compensation different from that contained in the complaint, and must be regarded as a new claim which, as such, is inadmissible.

39 It is thus apparent that the second ground of appeal, alleging an error of law committed by the Court of First Instance in holding that claim to be inadmissible, is unfounded and must be dismissed.

The third ground of appeal, alleging a denial of justice by the Court of First Instance in refusing to rule on the conditions governing liability on the part of the Commission

40 In support of this ground of appeal, Ms Campogrande argues that the three elements founding liability are present: fault on the part of the Commission, non-material damage suffered by the appellant and the causal link between the fault and the damage. She complains that the Court of First Instance did not rule on the facts giving rise to the damage, which were constituted, on the one hand, by the sexual harassment and, on the other hand, by the culpable attitude of the Commission. Similarly, the Court of First Instance did not rule on the existence of the non-material damage suffered by the appellant, on the ground that is not permitted to issue directions to the administration.

41 It must be pointed out that the Court of First Instance held that the Commission had committed a fault, which consisted in leaving the appellant in an uncertain position as to the outcome of her request for assistance, and that that wrongful conduct had caused non-material damage to Ms Campogrande. It nevertheless found that the annulment of the contested decision constituted, in itself, sufficient compensation for that damage.

42 As regards, on the other hand, the facts relating to the sexual harassment, the Court of First Instance, after having examined the appellant's allegations in the matter, found that they were not proved and dismissed the claim for compensation in that regard.

43 Finally, although the Court of First Instance rightly pointed out that the Community courts do not have jurisdiction to issue directions to the Commission, it did so only with a view to rejecting the appellant's claim for her career to be reconstituted and not for the purpose of refusing to rule on the question whether she had in fact suffered the alleged damage.

44 Besides, if Ms Campogrande's allegations are designed to show that the reparation granted by the judgment under appeal is inadequate, it must be pointed out that, once the Court of First Instance has found that there is damage, it alone is competent to determine, within the limits of the claim, the manner and extent of reparation of that damage (Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 81), with the result that that determination can no longer be the subject of argument before the Court of Justice.

45 It follows from the above that the third ground of appeal must, in any event, be rejected.

The fourth ground of appeal, alleging the rights of defence

46 Ms Campogrande maintains that, by basing its decision on an administrative inquiry which flouted the rights of defence, the Court of First Instance itself infringed those rights.

47 By that assertion alone, the appellant does not show that that inquiry was conducted in breach of the rights of the defence. Neither has she proved that the Court of First Instance based itself exclusively on that inquiry, since during the course of the proceedings she was able to express herself freely in her application and in a later pleading and moreover, as pointed out in paragraph 28 of the present judgment, among the elements of the inquiry reproduced in the grounds of the judgment under appeal are Ms Campogrande's own statements.

48 Therefore, the fourth ground of appeal must be dismissed as unfounded.

49 It follows for the reasons set out above that the appeal must be dismissed.

Costs

50 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 122 of the Rules of Procedure provides that, by way of derogation from Article 69(2), the Court may, in appeals brought by officials or other servants of an institution, order the parties to share the costs where equity so requires. However, since the appellant has been unsuccessful on every ground of her appeal and the Commission has applied for costs, the appellant must be ordered to pay the costs of the appeal.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the appeal;**

2. **Orders Ms Campogrande to pay the costs.**

Macken Puissochet Cunha Rodrigues

Delivered in open court in Luxembourg on 23 April 2002.

R. Grass

Registrar

F. Macken

President of the Third Chamber