JUDGMENT OF THE COURT (FIRST CHAMBER)
12 MAY 1977[1]

Margherita Hebrant (née Macevicius) v European Parliament

Case 31/76

1. *Officials — Appeals — Periodic reports — Admissibility*
(Staff Regulations of Officials, Article 91)

2. *Officials — Appeals — Period for lodging thereof — Periodic reports — Date of signature by the Head of the Administration — Date on which the period starts to run*
(Staff Regulations of Officials, Article 91)

1. It is clear that periodic reports generally constitute a more or less important factor each time the official concerned is considered for any promotion or takes part in competitions within the meaning of Article 29 of the Staff Regulations. Although it is true that these reports are made up of assessments which it is difficult for a Court to review, this fact does not prevent their adoption from being initiated for, irregularity of form and procedure or patent error and misuse of discretionary power — defects capable of making them unlawful. Therefore an application lodged against a periodic report is admissible.
2. A periodic report becomes definitive only on the date on which it is signed by the Head of the Administration. Accordingly, the fact that the applicant, in accordance with the procedure prescribed for the drawing up of periodic reports, had knowledge of the contents before that date is not capable of causing the period for lodging an appeal to start to run or of shortening it.

In Case 31/76

MARGHERITA HEBRANT (NÉE MACEVICIUS), an official of the European Parliament, residing at 6, Rue Léandre Lacroix, Luxembourg, represented by Victor Biel, Advocate of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Biel, 18a Rue des Glacis,

applicant,

v

EUROPEAN PARLIAMENT, represented by its Secretary General, Hans Robert Nord, acting as Agent, assisted by Alex Bonn, Advocate of the Luxembourg

1 — Language of the Case: French.

Bar, with an address for service in Luxembourg at the Chambers of Mr Bonn, 22, Côte d'Eich,

defendant,

Application principally for the annulment of the periodic report on the applicant for the period 1973 to 1974 and for an order that the defendant pay her 1 Flux by way of damages,

THE COURT (First Chamber)

composed of: A. M. Donner, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts and the arguments of the parties developed in the written procedure may be summarized as follows:

I — Facts and written procedure

The applicant, a qualified librarian who took up duties with the European Parliament on 1 December 1967, has since taken part in the management and the administration of the library. On 1 January 1973, she was classified in Grade A 4 (Principal Administrator).

In 1972, the Parliament appointed Mr Taylor as Head of the Directorate General for Research and Documentation, which is responsible for the library, and on 23 September 1974 it authorized him to carry out the reforms he envisaged.

From the first, the applicant opposed the measures for the reorganization of the library, and the appointment of Mr Reid, a temporary servant in Grade A 5, to the duties of reorganizer. She made a complaint to the President of the Parliament under Article 90 of the Staff Regulations of Officials, which was rejected on 5 May 1975. Although the measures at issue were revoked in April, she lodged an application on 31 July 1975. That application was dismissed by

judgment of the Court (Second Chamber) of 20 May 1976, (Case 66/75 [1976] ECR 593).

In its answer to the questions put by the Court in Case 66/75, the defendant produced several periodic reports concerning the applicant, other than the one covering the years 1973 to 1974 (annexed to the present application).

That report, dated 19 March 1975, contains the following entries:
(a) Ability: Good.
(b) Efficiency: Unsatisfactory — Her work has not been carried out with a sense of responsibility and in several respects has been inadequate.
(c) Conduct in the service: Unsatisfactory — Has shown insufficient willingness to cooperate with her colleagues.

General report: Has continued to show a lack of the sense of responsibility to be expected in an official of her seniority and appears to have decided on a policy of non-cooperation — All of this is a pity as she is clearly capable of valuable work.

However, Mr Taylor had assessed the applicant's ability and efficiency on other occasions. Thus:
— On 9 October 1974, offering to send her on mission to study cybernetics, he wrote: 'I envisage to give you the opportunity of employing your extremely valuable talents and experience elsewhere in the service of the Library on an important and pressing task ... it would be difficult for me to imagine the Library of the European Parliament without your valuable contribution ...';
— On 3 April 1975, suggesting to her that she should transfer to Brussels to the annexe to the library to be set up in the building occupied by the Members of Parliament, he wrote: 'Setting up this branch will obviously require complicated and responsible work'.

The report in question was communicated to the applicant on 23 March 1975, with an unsigned covering note saying: 'Please sign and return to Mr Taylor'. In her observations on the said report, the applicant described the assessments made in relation to her as constituting 'serious acts of abuse of powers by a Director General in the performance of his administrative duties'.

On 7 October 1975, the applicant lodged a complaint through official channels. She received no reply to it. On 24 March 1976, she therefore lodged the present application, entered in the Court Register on that same day.

The Court (First Chamber), after hearing the report of the Judge-Rapporteur and the views of the Advocate-General, decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The applicant claims that the Court should:
(a) Declare void and of no effect the implied decision of rejection of the complaint lodged on 7 October 1975 with the President of the European Parliament concerning the periodic report on the applicant for the period 1973 to 1974 which was drawn up by her Director General;
(b) Rule that the report is itself void and of no effect and order it to be withdrawn from the applicant's file;
(c) Rule that the failure of the European Parliament to lend the applicant the assistance to which she was entitled under Article 24 of the Staff Regulations constitutes a wrongful act or omission and, therefore, order the Parliament to pay the applicant the sum of 1 Flux by way of compensation;
(d) Order the Parliament to bear the costs of the action;

In the alternative,
— Take note that the applicant contests the criticisms made of her under

paragraphs (b) and (c) ('Efficiency' and 'Conduct in the service') of her periodic report and under the heading 'General Report' and that she offers to prove by all legal means and in particular by the hearing of witnesses that these criticisms are without foundation;
— In that case, make all the necessary orders.

(The applicant has not given details of her offer of proof).

The defendant claims that the Court should:
(a) Rule that the application is inadmissible;
(b) Alternatively, rule that it is unfounded;
(c) Reject the offer of proof as inadmissible and dismiss the application;
(d) Make an order as to costs in accordance with the provisions applicable.

In her reply, the applicant contends that the Court should, if it upholds the opinion of the European Parliament set out in its defence to the effect that the periodic report cannot be contested when it is not definitive and when the signature of the Secretary General does not appear on it:
(a) Rule unequivocally that no periodic report exists;
(b) Order the Parliament to bear all the costs of the action;
(c) Rule that the Parliament shall pay the applicant 1 Flux by way of damages in respect of serious misconduct on the part of the defendant;
(d) Rule that the Court censures the unprincipled failure to act on the part of the defendant.

In its rejoinder, the European Parliament contends that the Court should:
— Reject the applicant's further conclusions.

III — Submissions and arguments of the parties developed in the written procedure

(a) Admissibility

The *applicant* puts forward the following arguments concerning admissibility:
— The report at issue could adversely affect the applicant's career;
— The contested measure is indeed a decision, namely the implied decision to reject the applicant's complaint, despite the obligation to protect officials laid down by Article 24 of the Staff Regulations;
— A periodic report can give rise to an application to the Court; any annulment consequent upon proceedings before the Court results in the file's being returned to the competent authority, and the Court does not substitute its discretion for that of that authority.

The *Parliament,* for its part, puts forward the following arguments concerning admissibility:
— Under Article 90 (2) of the Staff Regulations, the positive act which may be contested must be a decision; however, the report laid down by Article 43 of the Staff Regulations is a periodic report, that is to say an assessment; the implied decision of rejection constitutes the outcome of the complaint through official channels, and the reference to Article 24 of the Staff Regulations is irrelevant;
— Applications to the Court by officials are, in principle, applications for a declaration as to legality and for annulment, whereas the final objective of an application against a periodic report is the drawing-up of another report; a decision of annulment may only be made on the ground of illegality and, upon reference back to the authority, the latter must comply with the judgment delivered; such cannot be

the case as regards a periodic report which is based entirely on a discretionary assessment;

— Only those acts capable of directly affecting a precise legal situation can be regarded as adversely affecting an official (cf. judgment of 11 July 1974 in Joined Cases 177/73 and 5/74, *Reinarz* v *Commission* [1974] ECR 819); however, a periodic report only constitutes one factor to be taken into consideration as regards the decisions to be taken concerning the course of the career of an official;

— The periodic report in question was communicated to the applicant at the latest on 24 April 1975; therefore the complaint through official channels was not lodged within the period of three months laid down by Article 90 (2) of the Staff Regulations; therefore the application does not satisfy the conditions laid down by Article 91 (2);

— The report did not, according to the applicant, bear the signature of the Secretary General at the time when it was communicated to her, and since, still according to her, it was not definitive, it could not, as such, be contested.

The *applicant,* in her reply, opposes the arguments based on inadmissibility advanced by the defendant, doing so as follows:

— The Directors General, on whom the Bureau of the Parliament has conferred the 'power to draw up reports', are in so doing performing acts of 'appraisal tantamount to a decision';

— Accordingly, the application has been validly brought before the Court, and the fact that the Court must refer the case back to the competent authority does not affect the matter at all;

— Any official is, at any moment in his career, in a precise legal situation which is affected by any periodic report;

— If the report was not definitive (absence of the signature of the Secretary General), the applicant should have been informed that her complaint was premature; in that case, Article 43 of the Staff Regulations has been infringed, for it provides that a periodic report shall be drawn up at least once every two years.

The *defendant,* in its rejoinder, answers, by referring to the arguments which it has developed in Case 122/75 (*Küster* v *European Parliament* [1976] ECR 1685) in which the applicant had also requested the annulment of a periodic report.

It is true that at the date on which the complaint through official channels was lodged, as also at the date on which the application was lodged, the periodic report had still not been signed by the Secretary General. It was only signed on 19 October 1976. Therefore there is no question that the application was lodged out of time.

(b) Substance of the case

The *applicant* considers that the illegality of the report arises from the fact that it was drawn up by the very person against whom she had lodged her complaint through official channels in Case 66/75 *mentioned above.* The person making the report thus makes himself judge in his own cause.

It appears from the contradictions, mentioned in the statement of the facts, between the report, which claims that she is inefficient, and the important tasks which continue to be entrusted to her, that there has also been a misuse of powers.

The periodic report communicated to the applicant does not bear the signature of the Secretary General, as required by the last paragraph of Article 2 of Document PE 16.808 (Staff Memo No 66/19 of 21 December 1966).

The defendant replies that the objectivity and the impartiality of the person making the report cannot be lightly called in question. The latter is neither judge nor witness.

The staff report cannot be affected by a misuse of powers. If a person making a report were to allow himself intentionally to give an official marks *below* the level he deserved, the result would merely be an objectively incorrect assessment, which could always be put right by the official in his observations annexed to the report.

Moreover, it is not for the report to deal with the duties performed by the official, but to appraise the way in which the latter carries them out.

As for the request that the Parliament should be ordered to pay 1 Flux by way of damages, based on the alleged wrongful act or omission of which it was guilty 'in not affording the applicant the assistance to which she was entitled on the basis of Article 24 of the Staff Regulations', it is unfounded. The Parliament made the necessary investigations further to the complaint through official channels of 7 October 1975. The question arises, in its opinion, whether it ought not, on the contrary, to protect the applicant's superiors against her attacks.

The *applicant* replies that if the signature of the Secretary General was in fact missing, the Court should declare that there is no periodic report for the period at issue.

The matters that the applicant offers to prove are facts which may be checked objectively and are capable of review by the Court.

As for the claim for damages, there is no proof of an examination of the complaint through official channels.

The *Parliament* states in its rejoinder that the fact that the periodic report for the period at issue, 1973 to 1974, retained the mark 'Good' under the criterion 'Ability', proves that the person making the report remained impartial.

On the other hand, the applicant's efficiency and her conduct in the service were affected by her open opposition to her Director General.

The applicant, represented by Mr Biel, Advocate of the Luxembourg Bar, and the Parliament, represented by its Secretary General, Mr Nord, acting as Agent, and by Mr Bonn, Advocate of the Luxembourg Bar, presented oral argument at the hearing on 16 December 1976.

The Advocate-General delivered his opinion at the hearing on 30 March 1977.

Decision

1 The present application, which was lodged on 24 March 1976, is principally for the annulment of the applicant's periodic report, which was drawn up in respect of the period 1973/1974 and for an order that the defendant should pay symbolic damages of one Luxembourg franc.

2 The report in question, dated 19 March 1975, bears the rating 'Good' under the heading 'Ability', unfavourable assessments with regard to efficiency and conduct in the service and a general report which is also unfavourable.

3 Because these assessments did not correspond to those contained in the preceding reports, the applicant described them in her observations on that report as 'serious acts of abuse of powers by a Director General in the performance of his administrative duties'.

4 A reply in the affirmative was given to the question put by the Court to the defendant as to whether the competent Director General had replied to the observations of the applicant on that report before the periodic report in question was signed, as is obligatory, by the Secretary General of the Parliament.

Admissibility

5 The defendant alleges first of all that a periodic report cannot be an act which may be contested under Article 90 (2) of the Staff Regulations because it is only a purely internal act the remedies for which lie solely in the right of the person affected to add any objections and observations.

6 Since Article 43 of the Staff Regulations provides for the making of a periodic report every two years these are thus mandatory measures which must be communicated to the person concerned.

7 It is clear that these periodic reports generally constitute a more or less important factor each time the official concerned is considered for any promotion or takes part in competitions within the meaning of Article 29 of the Staff Regulations.

8 Although it is true that these 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 lack of authority, irregularity of form and procedure or patent error and misuse of discretionary power — defects capable of making them unlawful.

9 Accordingly the argument that an application against a periodic report is *ipso facto* inadmissible cannot be accepted.

10 The defendant puts forward in the alternative the argument that the report was notified to the applicant on 24 April 1975 at the latest, so that her complaint through official channels lodged on 7 October 1975 was out of time.

11 The report in question was countersigned by the Secretary General of the Parliament on 19 October 1976 in the form in which it had been communicated to the applicant.

12 It became definitive only on that date.

13 Accordingly, the fact that the applicant, in accordance with the procedure prescribed for the drawing up of periodic reports, had knowledge of the contents before that date is not capable of causing the period for lodging an appeal to start to run or of shortening it.

14 The application is therefore admissible.

The substance of the case

15 The applicant considers that the report is illegal first of all because it was drawn up by the very person against whom she had already submitted her complaint through official channels in a previous case (Case 66/75, [1976] ECR 593).

16 She claims that in so doing, the Director General is making himself judge and witness in his own cause.

17 The applicant has put forward no factor which is capable of proving that the person making the report was not impartial and sought by his assessments adversely to affect the applicant's career.

18 On the contrary it appears from the file that the person concerned has shown that at least her 'conduct' left much to be desired through her refusal to cooperate with the measures put in hand for the purposes of the reorganization of the service.

19 For these reasons, the first submission cannot be accepted.

20 The applicant secondly alleges a misuse of powers inasmuch as, while the conclusions of the report tended to show her inefficiency, important duties were still entrusted to her.

21 This fact is not by itself capable of establishing a misuse of powers.

22 It appears from the proceedings that the Secretary General only signed the report on 19 October 1976.

23 It is appropriate for the Court to examine of its own motion whether this delay is such as to make the report legally void.

24 A periodic report must be drawn up in respect of every two-year period and signed by the Secretary General.

25 The explanations supplied by the defendant concerning *inter alia* the special vicissitudes arising from the lodging of two successive applications overlapping in time are however convincing and enable the Court to acknowledge that the delay of the Secretary General of the Parliament in countersigning is explained by his concern to obtain from the Director General a reply to the observations of the applicant.

26 Therefore the periodic report is not vitiated by the fact that the signature of the Secretary General was belatedly given.

27 The application must therefore be dismissed as unfounded.

Costs

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

29 The applicant has failed in her submissions.

30 However, under Article 70 of the Rules of Procedure, the costs incurred by the institutions in actions brought by servants of the Communities are to be borne by such institutions.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Dismisses the application as unfounded;

2. Orders the parties to bear their own costs.

Donner O'Keeffe Bosco

Delivered in open court in Luxembourg on 12 May 1977.

A. Van Houtte
Registrar

A. M. Donner
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 30 MARCH 1977 [1]

Mr President,
Members of the Court,

The present application, lodged by Mrs Hebrant, née Macevicius, against the European Parliament on 24 March 1976, is the logical and indeed foreseeable consequence of the first dispute between the same parties, upon which the Second Chamber of the Court passed judgment last year.

The applicant, an official in Grade A 4, was a librarian in the Directorate General

1 — Translated from the French.