JUDGMENT OF THE COURT (First Chamber)
8 June 1988 *

In Case 135/87

Androniki Vlachou, an official of the Court of Auditors of the European Communities, assisted and represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 18 A rue des Glacis, who was replaced during the proceedings by Patrick Weinacht, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 6 rue Heine,

applicant,

v

Court of Auditors of the European Communities, represented by Michael Becker and Marc Ekelmans, acting as Agents, with an address for service in Luxembourg at the seat of the Court of Auditors, 29 rue Aldringen,

defendant,

supported by

K., an official of the Court of Auditors of the European Communities, assisted and represented by Aloyse May, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 31 Grand-rue,

intervener,

APPLICATION for a declaration that the decisions whereby the Court of Auditors refused to appoint the applicant to a post of reviser/principal translator and the decision whereby it organized an interinstitutional competition to fill two posts of revisers/principal translators are unlawful,

* Language of the Case: French.

THE COURT (First Chamber),

composed of: G. Bosco, President of Chamber, R. Joliet and F. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 20 April 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 4 May 1988,

gives the following

Judgment

1 By application lodged at the Court Registry on 30 April 1987, Mrs Androniki Vlachou, a translator at the Court of Auditors, brought an action for a declaration that the decision whereby the Court of Auditors refused to appoint her to a post of reviser/principal translator and the decision whereby it organized an interinstitutional competition to fill two posts of revisers/principal translators are unlawful.

2 Mrs Vlachou took part in Internal Competition No CC/LA/20/82 to fill the post of a reviser/principal translator in the Greek translation section of the Language Service of the Court of Auditors. Following that competition, the President of the Court of Auditors, in his capacity as the appointing authority, appointed to the post in question by decision of 25 November 1983 Mr K. who was first on the list of suitable candidates drawn up by the Selection Board.

3 Mrs Vlachou, who was second on that list, brought an action against that decision on the ground that the procedure in the aforesaid competition was vitiated by a number of irregularities.

4 In giving judgment on that application on 6 February 1986 (Case 143/84 *Vlachou* v *Court of Auditors* [1986] ECR 459), the Court held as follows:

'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 (paragraph 19).

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 (paragraph 20).

Having regard to the illegality of the procedure followed in Competition No CC/LA/20/82, 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 (paragraph 21).'

5 Following that judgment annulling the appointment of Mr K., by letter of 21 March 1986 Mrs Vlachou requested the appointing authority of the Court of Auditors to appoint her to the post in question.

6 By decision of 15 July 1986 the appointing authority rejected that request as unfounded. Subsequently, by decision of 26 August 1986, it organized an interinstitutional competition (No CC/LA/10/86) in order to fill the two posts of reviser/principal translator that were still vacant in the Greek translation section of the Language Service of the Court of Auditors.

7 After her complaint against the aforesaid decisions of 15 July and 26 August 1986 was rejected by decision of 29 January 1987, Mrs Vlachou brought this action before the Court.

8 By order of 24 September 1987, the First Chamber of the Court granted Mr K. leave to intervene in support of the defendant's conclusions. In his observations to the Court, he fully endorsed the arguments put forward by the Court of Auditors.

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are referred to hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

10 The Court of Auditors contends that the action is inadmissible inasmuch as, in view of its subject-matter and the submissions put forward, it relates only to the interpretation of the Court's aforementioned judgment of 6 February 1986. The applicant should not therefore have brought an action for annulment but should have made an application for interpretation pursuant to Article 40 of the Protocol on the Statute of the Court of Justice of the EEC. The possibility of reclassifying this action as an application for interpretation is, moreover, ruled out by the fact that it was not brought against all the parties to the case in which the Court gave judgment on 6 February 1986, as required by Article 102 of the Court's Rules of Procedure.

11 In that regard, it is necessary to ascertain whether the subject-matter of this action relates solely to the interpretation of the Court's judgment of 6 February 1986.

12 It must be pointed out that, as is apparent from the conclusions set out in the application, the action seeks essentially the annulment of two decisions of the Court of Auditors, namely that of 15 July 1986 rejecting the applicant's request to be appointed to the post in question, and that of 26 August 1986 concerning the organization of Interinstitutional Competition No CC/LA/10/86.

13 Although the scope of this dispute does embrace the interpretation of the Court's judgment of 6 February 1986, it is necessary to examine that judgment solely with a view to establishing whether one of the grounds for annulment relied upon by the applicant in this case, namely the infringement of Article 176 of the EEC Treaty, is well founded.

14 In those circumstances, it must be held that this action must be construed not as a mere application for interpretation under Article 40 of the Protocol on the Statute of the Court of Justice of the EEC, but as an action for the annulment of the contested decisions.

15 The action is therefore admissible.

Substance

16 In support of her action for annulment, the applicant relies on three submissions alleging an infringement of Article 176 of the EEC Treaty, an infringement of Article 29 of the Staff Regulations and a misuse of powers.

17 In her first submission, the applicant maintains that, in implementing the Court's judgment of 6 February 1986 annulling the decision appointing Mr K., the appointing authority should have appointed her to the post in question, as the only other person on the list of successful candidates drawn up in Competition No CC/LA/20/82.

18 It must be pointed out in that regard that, according to the wording of the first paragraph of Article 176 of the EEC Treaty, an institution whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court of Justice.

19 In this case, it is quite clear from the grounds of the aforesaid judgment, in particular paragraph 20, that the illegality vitiating the procedure followed in Competition No CC/LA/20/82 affected the validity of the decision whereby the Selection Board drew up the list of suitable candidates.

20 That list could not therefore constitute a valid basis for any appointment decision. It follows that, in compliance with the judgment in question, the appointing authority could but reject the applicant's request to be appointed to the post of reviser/principal translator by virtue of her classification on the list of suitable candidates.

21 The first submission cannot therefore be accepted.

22 In her second submission, the applicant claims that the appointing authority infringed Article 29 of the Staff Regulations by deciding to hold Interinstitutional Competition No CC/LA/10/86 instead of repeating Internal Competition No CC/LA/20/82. However, she does not put forward any arguments in that regard.

23 This submission cannot be accepted. It is for the appointing authority to choose, in accordance with the order of preference set out in Article 29 of the Staff Regulations, the most appropriate method of filling a vacant post. To that end, as the Court has already emphasized on several occasions (see the judgment of 25 November 1976 in Case 123/75 *Küster* v *Parliament* [1976] ECR 1701, and the judgment of 14 July 1983 in Case 10/82 *Mogensen* v *Commission* [1983] ECR 2397), the appointing authority has a wide discretion for the purpose of finding the candidate with the highest standard of ability, efficiency and integrity.

24 The mere fact that the appointing authority organized an interinstitutional competition instead of repeating the internal competition procedure, which the Court had declared unlawful in its judgment of 6 February 1986, does not mean that Article 29 of the Staff Regulations has been infringed. The Court has already pointed out in its judgment of 24 June 1969 in Case 26/68 *Fux* v *Commission* [1969] ECR 145 that it does not follow from that provision of the Staff Regulations that once a recruitment procedure has been initiated the appointing authority is obliged to pursue it by filling the post declared vacant.

25 In those circumstances, it must be held that, by deciding to hold Interinstitutional Competition No CC/LA/10/86 instead of repeating Internal Competition No CC/LA/20/82, the appointing authority has not failed to fulfil its obligations under Article 29 of the Staff Regulations.

26 As for her third submission, alleging a misuse of powers, the applicant merely stated at the hearing that, in its contested decisions, the sole aim pursued by the appointing authority was to avoid appointing her to the post in question.

27 As the Court has already stated (see the judgment of 25 November 1976 in Case 123/75 *Küster* v *Parliament* [1976] ECR 1701), a misuse of powers is not deemed to exist unless it is proved that the appointing authority in taking the measure in question has followed an objective other than that pursued by the rules in question. In this case, the applicant's allegation, which is unsupported by any evidence, is not sufficient to establish the existence of a misuse of powers, particularly since it is clear from the foregoing considerations that the contested decisions had been adopted by the appointing authority in the exercise of its discretion and in compliance with a previous judgment given by the Court.

28 The third submission cannot therefore be accepted either.

29 As the applicant has been unsuccessful in her submissions, the action must be dismissed.

Costs

30 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those rules, in proceedings brought by servants of the Communities, institutions are to bear their own costs, without prejudice to the second subparagraph of Article 69 (3) concerning costs which the Court considers to have been unreasonably or vexatiously caused.

31 In this case, the defendant and the intervener have asked the Court to order the applicant to pay the whole of the costs on account of the vexatious nature of her action.

32 However, this action cannot be regarded as vexatious in so far as the applicant seeks a review by the Court of Justice of the legality of the decision whereby the Court of Auditors initiated the procedure in Interinstitutional Competition No CC/LA/10/86. The applicant is therefore entitled to benefit from Article 70 of the Rules of Procedure. She must none the less bear the costs of the intervener.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the applicant to bear her own costs and those of the intervener;

(3) Orders the Court of Auditors to bear its own costs.

Bosco Joliet Schockweiler

Delivered in open court in Luxembourg on 8 June 1988.

J.-G. Giraud
Registrar

G. Bosco
President of the First Chamber