REPORT FOR THE HEARING
delivered in Case 135/87 *

I — Facts and procedure

In its judgment of 6 February 1986 in Case 143/84 *Vlachou* v *Court of Auditors* [1986] ECR 459, the First Chamber of the Court, in considering the legality of the procedure followed in Internal Competition No CC/LA/20/82 (for the post of a reviser/ principal translator in the Greek translation section of the Language Service of the Court of Auditors) 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 under-valuation of certain certificates produced by the 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).'

Following that judgment annulling the appointment of Mr K. (who was first on the list of suitable candidates drawn up in the aforesaid competition), by letter of 21 March 1986 Mrs Vlachou, a translator in the Greek translation section of the Language Service of the Court of Auditors (who was second on that list) requested the appointing authority at the Court of Auditors to appoint her to the post in question. By decision of 15 July 1986 the appointing authority rejected that request as unfounded.

By decision of 26 August 1986 the appointing authority announced the organization of an interinstitutional competition (No CC/LA/10/86) in order to fill the posts of reviser/principal translator which were still vacant in the Greek translation section of the Language Service.

On 14 October 1986 Mrs Vlachou lodged a complaint against the aforesaid decisions of 15 July and 26 August 1986. After that complaint was rejected by decision of 29 January 1987, Mrs Vlachou brought this action which was lodged at the Court Registry on 30 April 1987.

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.

* Language of the Case: French.

The written procedure followed the usual course.

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

II — Conclusions of the parties

Mrs Vlachou claims that the Court should:

(a) declare the action admissible;

(b) declare the action well founded;

(c) declare that the decisions rejecting her request of 21 March 1986 and her complaint of 14 October 1986 are unlawful and therefore annul them;

(d) consequently, declare that the applicant is entitled to the LA 5/LA 4 post in question in the Greek translation section of the Court of Auditors;

(e) declare void Competition No CC/LA/10/86 published by the Court of Auditors;

(f) order the Court of Auditors to pay the costs.

The Court of Auditors contends that the Court should:

dismiss the action as inadmissible or, at the very least, as unfounded;

order the applicant to pay the whole of the costs.

Mr K. contends that the Court should:

dismiss the action as inadmissible;

alternatively, declare the action unfounded;

order the applicant to pay the costs in their entirety.

III — Submissions and arguments of the parties

Admissibility

In its defence, the Court of Auditors objects that the action is inadmissible. It contends that since the subject-matter of these proceedings is essentially the interpretation of the Court's judgment of 6 February 1986 in Case 143/84, the applicant, instead of bringing an action for annulment, should have applied to the Court for an interpretation of that judgment in accordance with Article 40 of the Protocol on the Statute of the Court of Justice of the EEC. Furthermore, the Court of Auditors rules out the possibility of reclassifying this action as an application for interpretation since it was not brought against all the parties involved in Case 143/84, as required by Article 102 of the Court's Rules of Procedure.

In any event, the action is inadmissible in so far as it seeks the annulment of the decision rejecting the request submitted by the applicant on 21 March 1986. Such a

decision could only be (and was) contested by means of an official complaint.

Mrs Vlachou maintains, however, that the action is admissible since it was brought within the prescribed period and relates to measures adversely affecting her. Moreover, she points out that the Court's judgment in Case 143/84 was, in her view, quite clear and she therefore had no interest in applying for its interpretation.

Mr K. endorses the observations submitted by the Court of Auditors with regard to the admissibility of the action.

Substance

With regard to the substance, the applicant relies on three submissions.

The first submission alleges an infringement of Article 176 of the EEC Treaty, inasmuch as the appointing authority should, in compliance with the judgment in Case 143/84, have appointed the applicant — who was second on the list of suitable candidates drawn up in Competition No CC/LA/20/82 — to the post in question. In support of this submission, Mrs Vlachou maintains that, in the aforesaid judgment, the Court declared invalid not the entire list of suitable candidates drawn up in that competition, but only the decision appointing to the post the first person on the list (Mr K.). In her view, that argument is also supported by the Court's judgment of 9 February 1984 in Joined Cases 316/82 and 40/83 *Kohler* v *Court of Auditors* [1984] ECR 641.

The second submission alleges an infringement of Article 29 of the Staff Regulations, inasmuch as, in the event of the annulment of the aforesaid competition, the appointing authority should have repeated the internal competition instead of holding an interinstitutional competition.

Finally, the applicant alleges a misuse of powers, inasmuch as the refusal to appoint her to the post in question is not dictated by the interests of the service.

The Court of Auditors contends that, in its judgment in Case 143/84, the Court established that the procedure followed in Competition No CC/LA/20/82 was vitiated by an objective defect, namely the illegality of the Selection Board's decision laying down the criteria for the awarding of marks for documentary attestation of practical experience of candidates. Such illegality clearly entailed the invalidity of the list of suitable candidates drawn up by that Selection Board on the basis of the contested marking criteria. That is clear, moreover, from the wording of the aforesaid judgment, in particular, paragraph 20.

In the circumstances, the Court of Auditors considered itself unable to appoint the applicant to the post on the basis of a list of suitable candidates declared unlawful by the Court of Justice. Instead, it was required, in compliance with the Court's judgment, first of all to annul the appointment of Mr K., and secondly to proceed once again to fill the post which had thus become vacant. The Court of Auditors also points out that the precedents relied upon by the applicant in support of her argument are not relevant since they relate to cases in which the Court did not declare unlawful the list of suitable candidates drawn up by the Selection Board.

With regard to the alleged infringement of Article 29 of the Staff Regulations, the Court of Auditors observes that, as the Court has consistently held, it is for the appointing authority to determine, in accordance with the order of preference set out in Article 29, the appropriate method for filling vacant posts in the institution concerned.

Finally, the Court of Auditors asks that the applicant should be ordered to pay the whole of the costs in view of the vexatious nature of her action.

Mr K. endorses the arguments put forward by the Court of Auditors and points out, in the first place, that the Court's judgment of 6 February 1986 annulled the list of suitable candidates drawn up in Competition No CC/LA/20/82 and, secondly, that the decision of the appointing authority to fill the post in question by means of an interinstitutional competition is a matter exclusively within the discretion of the appointing authority in this area.

Finally, Mr K. contends that the applicant should be ordered to pay the whole of the costs, including his own.

G. Bosco
Judge-Rapporteur