REPORT FOR THE HEARING
delivered in Case 204/85 *

I — Facts

By a decision of the appointing authority of the Court of Auditors of the European Communities of 28 February 1984 Mrs Androniki Vlachou was appointed a probationary official in Grade LA 6 (translator).

On 26 October 1984 a report concerning her probationary period was drawn up pursuant to Article 34 of the Staff Regulations.

On 5 November 1984 written observations were made by Mrs Vlachou concerning the said report.

By a decision of 26 November 1984 the Secretary of the Court of Auditors, in exercise of the powers conferred on him by the appointing authority by Decision 84-15, established Mrs Vlachou in her post in Grade LA 6.

On 26 February 1985 a complaint against that decision was lodged by Mrs Vassiliki Stroghili, a translator in Grade LA 7 at the Court of Auditors. When that complaint was rejected by the President of the Court of Auditors on 21 June 1985, Mrs Stroghili brought an action on 3 July 1985.

She claims that the decision establishing Mrs Vlachou:

(i) infringes Articles 27 and 34 (2) of the Staff Regulations, and

(ii) is vitiated for misuse of powers inasmuch as it was adopted in disregard of the unfavourable report issued at the end of her probationary period.

By order of 31 January 1986 Mrs Vlachou was allowed to intervene in support of the contentions of the defendant.

Upon hearing the report the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry and to confine the argument to the question of the admissibility of the action.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare the application admissible and well-founded;

2. Before giving judgment order the defendant:

   (a) to produce:

   the report issued at the end of Mrs Vlachou's probationary period;

   the 'note for Mrs Vlachou's personal file' of 16 November 1984 from the President of the Court of Auditors;

   (b) to disclose:

   the identity of the 'external assessors' who reviewed the translations made during the probationary periods;

3. Annul:

   (a) The decision adopted on 26 November 1984 by Jean-Aimé Stoll,

* Language of the Case: French.

who as Secretary to the Court of Auditors is responsible for staff management, establishing Mrs Androniki Vlachou, a probationary official in Grade LA 6 assigned to the President's section, in her post.

(b) In so far as is necessary, the Court of Auditors' decision expressly rejecting the applicant's administrative complaint under Article 90 (2) of the Staff Regulations of 26 February 1985.

4. Order the defendant to pay the costs pursuant to Article 69 (2) of the Rules of Procedure, including the costs necessarily incurred by the applicant for the purposes of the proceedings and in particular the costs relating to the address for service, travel, subsistence and legal fees pursuant to Article 73 (b) of the Rules of Procedure.

The *defendant* contends that the Court should:

1. Declare the application in Case 204/85 inadmissible, alternatively unfounded;

2. Order the applicant to pay the entire costs.

The *intervener* contends that the Court should:

1. Declare the application in Case 204/85 inadmissible, alternatively unfounded;

2. Order the applicant to pay the entire costs including those of the intervener.

III — Submissions and arguments of the parties on the admissibility of the action

The *Court of Auditors*, supported by the intervener, contends mainly that the applicant has no legitimate interest in bringing proceedings since she makes no claims which relate to her personally.

According to established case-law, an action is admissible only if the contested measure is liable directly to affect a specific legal situation and if the applicant has a vested and present interest in bringing proceedings. The applicant attempts to justify her action by an indirect, potential, future and hypothetical interest in bringing proceedings. In so far as the applicant submits that the establishment of Mrs Vlachou reduces the applicant's chances of promotion from LA 7 to LA 6, it must be observed first that such promotion is in any event within the discretion of the appointing authority and secondly that when the action was brought two LA 6 posts were still vacant in the Court of Auditors. Moreover, any interest in bringing proceedings based on a reduction of her chances of promotion to LA 6 disappeared when Mrs Stroghili was promoted to LA 6 on 21 November 1985.

In so far as the applicant claims that the establishment of Mrs Vlachou makes her an 'unlawful competitor' of the applicant in any future competition to fill a post in Grade LA 5/4, it must be observed that any damage depends on the hypothetical participation of both the applicant and Mrs Vlachou in such a competition and that, even if Mrs Vlachou's establishment were annulled, the applicant would have no certainty of succeeding in such a competition or being appointed to the post.

As regards costs, the Court of Auditors considers that the action brought by Mrs Stroghili is manifestly inadmissible and the applicant ought in consequence to bear the costs of an action which had no chance of succeeding.

The *applicant* submits that her interest in bringing proceedings arises from:

(i) the interest of every official in ensuring that the institutions should have the services of competent officials who give evidence of good conduct;

(ii) her interest as a member of the Greek translation department in ensuring that the working atmosphere should not be disturbed by the presence of an official who does not have the necessary qualities and ability for the duties;

(iii) her interest, which should be judged when the action was brought, in not having her chances of promotion to LA 6 reduced and her interest in not suffering 'unlawful competition' from Mrs Vlachou in any competition for a post in the career bracket LA 5/4.

G. Bosco
Judge-Rapporteur