JUDGMENT OF THE COURT (Second Chamber)
20 June 1985 *

In Case 138/84

Eleni Spachis, an official of the Commission of the European Communities residing in Brussels, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Decker, 16 Avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, Dimitrios Gouloussis, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Service, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the decision classifying the applicant on her appointment to a post as an administrator,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: C. O. Lenz
Registrar: J. A. Pompe, Deputy Registrar

after hearing the Opinion of the Advocate General delivered at the sitting on 15 May 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 23 May 1984, Eleni Spachis, an official in Directorate General XII of the Commission, brought an action for the annulment of the Commission's decision of 13 December 1982 appointing her to a post as an administrator, in so far as that decision classified her in Grade A 7, Step 2.

2 It appears from the documents put before the Court that the applicant took part in two open competitions organized by the Commission:

— in 1980, in Competition No COM/A/301 (for administrators), and

— in 1981, in Competition No COM/LA/331 (for translators).

She was successful in both competitions and was in each case included on the list of suitable candidates.

3 The first vacancy arose under Competition No COM/LA/331 and Mrs Spachis accepted a post as a translator in Grade LA 7, as a probationary official. At the end of her probation, she was established in that post by a decision of 22 September 1982.

4 Shortly afterwards, a vacancy arose for the applicant under Competition No COM/A/301. On 13 December 1982 she was appointed to a post as an administrator in the Research Evaluation Department of the Directorate for Scientific and Technical Coordination, Cooperation with non-member countries, and COST, in Directorate General XII — Science, Research and Development. It should be noted that Mrs Spachis was appointed to that post as an established official, without being required to complete another probationary period.

5 The applicant accepted that appointment but immediately requested the administration to review her previous experience which, in her view, entitled her to be appointed directly to Grade A 6, in accordance with Article 3 of the Decision of 6 June 1973 on the criteria applicable to grade and step classification upon recruitment. She received no reply to that request and on 29 September 1983 lodged a complaint under Article 90 of the Staff Regulations. The Commission rejected her complaint on the ground that she was appointed an administrator by way of transfer from the Language Service and not by way of recruitment, with the result that Articles 31 and 32 of the Staff Regulations, concerning recruitment, did not apply in her case.

6 In her complaint and her application to the Court, Mrs Spachis puts forward two submissions based on the one hand on the infringement of Articles 29 to 32 of the Staff Regulations and of the Decision of 6 June 1973, and on the other on the breach of the principle of non-discrimination.

7 She argues first that she had, before entering the service of the Communities, nine years' experience of work directly related to the duties to which she was appointed as a result of Competition No COM/A/301. That special experience could not be taken into account when she was appointed as a translator, so that she had to be appointed to the starting grade in that career bracket. She therefore considers that her position ought to have been reviewed, pursuant to Article 32 of the Staff Regulations and the decision adopted by the Commission in implementation of Article 32, when she was transferred from the Language Service to a post as an administrator, because her experience could not properly have been taken into account on the occasion of her original appointment.

8 In addition, Mrs Spachis relies upon the principle of non-discrimination, claiming that she was treated less favourably than the other candidates in Competition No COM/A/301 who were not officials and whose previous experience was taken into account whereas hers was not.

9 In reply to the first submission, the Commission contends that Articles 31 and 32 of the Staff Regulations apply only once in the career of an official, namely at the time when he is first recruited, as was stated by the Court in its judgment of

12 July 1984 in Case 17/83 (*Angelidis* v *Commission* [1984] ECR 2907). As regards the allegation of discrimination, the Commission points out that the position of external candidates in a competition and candidates in the same competition who are already officials is not comparable and that it therefore does not constitute discrimination to apply the special rules laid down by the Staff Regulations for each category, as was recognized by the Court in its judgment of 29 January 1985 in Case 273/83 (*Michel* v *Commission* [1985] ECR 354).

10 In order to resolve this dispute, the applicant's position under the Staff Regulations must first be determined. She was originally appointed to the Language Service and then moved to an administrative post. According to Article 45 (2) of the Staff Regulations, that transfer could take place only on the basis of a competition. The applicant satisfied that condition, although she was in a special position inasmuch as the competition which enabled her to be transferred had taken place before she was first appointed a Community official.

11 It thus appears that as a result of the first competition the applicant had acquired a right, before her appointment to the Language Service, to have her professional qualifications and previous experience appraised with a view to applying Article 31 (2) of the Staff Regulations and Article 3 of the Decision of 6 June 1973. The fact that she was first recruited to a post in the Language Service, for which those qualifications were irrelevant, could not deprive her of the opportunity of relying on that experience for the purposes of her classification in grade and step in the administrative post to which she was subsequently appointed.

12 The Commission's refusal to take account of the applicant's previous experience when she transferred from the Language Service to an administrative post was a breach of a substantive right previously acquired by the applicant by virtue of her passing Competition No COM/A/301.

13 The decision of 13 December 1982 must therefore be annulled in so far as it classifies the applicant in grade and step, in order to enable the Commission to assess the applicant's previous experience on the basis of the rules laid down in Article 31 and in the Decision of 6 June 1973.

Costs

14 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Annuls the Commission's decision of 13 December 1982 appointing the applicant to a post as an administrator in so far as it fixes the applicant's grade and step;

(2) Orders the Commission to pay the costs.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 20 June 1985.

P. Heim
Registrar

O. Due
President of the Second Chamber