

JUDGMENT OF THE COURT (SECOND CHAMBER)
14 JULY 1983¹

Maria Mascetti
v Commission of the European Communities

(Official — Reinstatement in career following absence —
Interest in bringing an action)

Case 145/80

In Case 145/80

MARIA MASCETTI, an official of the European Communities, assisted and represented by C. Ribolzi of the Milan Bar, with an address for service in Luxembourg at the Chambers of V. Biel, 18 A Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by O. Montalto, a member of its Legal Department, acting as Agent, assisted by P. De Caterini of the Rome Bar, with an address for service in Luxembourg at the office of its Legal Adviser, M. Cervino, Jean Monnet Building, Kirchberg,

defendant,

concerning, at the present stage of the proceedings, the reinstatement of the applicant in her career as regards her seniority in step,

¹ — Language of the Case: Italian.

THE COURT (Second Chamber)

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

Advocate General: G. F. Mancini
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

60 of the Staff Regulations of Officials (applicable by analogy to members of the establishment staff) that her absence was unauthorized and suspended payment of her remuneration.

I — Facts and procedure

1. On 1 March 1961 the applicant was recruited as a member of the establishment staff, holding the post of principal secretary at the Ispra Joint Research Centre. She was absent from work from 18 November 1974 but the period until 14 December 1974 was, following further correspondence, set off against her remaining annual leave for 1974. After a warrant for the applicant's arrest was issued on the latter date for an alleged political offence, the Administration and Personnel Division of the Joint Research Centre notified her on 9 January 1975, pursuant to Article

On 20 February 1975 the Joint Research Centre rejected an application for unpaid leave on personal grounds submitted by the applicant. By judgment of 16 December 1976 (Case 2/76 [1976] ECR 1975), the Court dismissed the application lodged by the applicant against that decision.

By a letter of 23 March 1977 the Director of the Ispra Joint Research Centre invited the applicant to enter into a temporary servant's contract following the introduction of the new conditions of employment of staff paid out of research appropriations, which had entered into force on 30 October 1976. The contract offered to the applicant provided that, subject to "any other decision relating to (her) present absence from duty", she

would be assigned "to Category C, Grade 1, with effect from 30 October 1976". According to that letter, the applicant had a period of six months in which to accept the offer. She accepted within the stipulated period but stated that she was unable to go to Ispra to sign the contract.

By a letter of 14 November 1977 the applicant requested *inter alia* that a clear ruling be given with regard both to the contractual aspect (signature of the proposed contract) and to remuneration. On 15 February 1978 the Director-General informed the applicant that she could enter into the contract as soon as she was in a position to report for work.

On 15 November 1978 she was further informed that "the social security insurance premiums payable to the Istituto Nazionale della Previdenza Sociale [National Social Security Insurance Institution] and the Istituto Nazionale per l'Assicurazione contro le Malattie [National Sickness Insurance Institution] at Varese had been paid until 31 December 1974."

The applicant was acquitted on the charge concerning the above-mentioned offence by a judgment of 14 July 1978 and she resumed work at Ispra towards the end of 1978, even before the judgment became *res judicata*.

After her return to Ispra a contract was offered to her which she signed on 30 November 1978, Article 3 thereof being worded as follows:

"The servant shall be assigned to Category C, Grade 1, Step 6. Seniority in the grade shall date from 1 December 1977."

The applicant must have contested that clause since on 26 March 1979 she was

told that the contract would be "redrafted so as to assign her to Grade C 1/7, which had been offered (to her) in the note of 23 March 1977". The contract which followed, signed by the applicant on 12 April 1979, backdated her seniority in the grade to 30 October 1976. However, her seniority in the new step dated from 1 November 1977.

On 26 May 1979 the applicant lodged a written protest on that point in which she contended that, according to her own calculations, her seniority in the step should have commenced on 1 October 1975.

On 10 August 1979 the administration wrote to the applicant in the following terms:

"Further to my note of 11 July 1979 and in reply to your memo 12/136/79 of 25 May 1979 I regret to inform you that I can only confirm your seniority in Step 7 of Grade C 1.

The Legal Department considers that the seniority in the step acquired as at 30 October 1976 could only start to run again from the effective resumption of your duties, that is to say in December 1978."

Following a further note from the applicant, the Ispra administration sent her the note setting out the opinion of the Legal Department on 2 October 1979.

On 7 November 1979 the applicant sent a letter to the Head of the Administration and Personnel Division in which she requested:

"That (her) career record as a member of the establishment staff and as

temporary servant be fully reinstated, without any break in continuity and with the benefit of all the two-yearly steps as granted to (her) colleagues of the same category;

That the salary which had accrued during (her) absence and which was due (to her) following reinstatement in her career, as requested in the preceding paragraph, be paid (to her) in full;

That the insurance contributions payment of which had been arbitrarily suspended after 31 December 1974 [letter (from the Commission) of 15 November 1978] be paid to her in full;

That the shortfall of her severance grant to which (she) was entitled as member of the establishment staff and which had been calculated only up to 31 December 1974 should be paid (to her);

That (her) pension rights, which should be based on the full duration of (her) service from the retroactive effective date of (her) temporary servant's contract should not be reduced in any way."

Having received no reply, on 13 June 1980 the applicant brought this action.

2. Referring in her application to her letter of 7 November 1979, the applicant claims that the Court should:

Annul the decision whereby the Commission refused to regard the period of (her) enforced absence as a period of service for all purposes;

Declare that the Commission is bound to reinstate the applicant in (her) career

and, consequently, to restore her financial rights, which have already been specified in the complaint.

3. The Commission raised an objection of inadmissibility on the ground that the application was lodged out of time.

4. In its interlocutory judgment of 14 July 1981 (Case 145/80 [1981] ECR 1975), the Court held that the application was admissible "with regard to the claim relating to seniority in the step", whilst "with regard to the other heads of claim referring to the payment of salary, pension rights, social security contributions and compensation for termination of the employment contract as a member of the establishment staff ... since the applicant allowed a year to elapse before making the claims contained in her letter of 7 November 1979, it is clear that those claims were submitted out of time and therefore in so far as they are concerned the application must be dismissed as inadmissible."

5. In the light of that judgment, the Commission offered to insert an additional term in the applicant's contract classifying her in Step 8 as from 1 December 1978, the date on which she effectively resumed her duties.

6. In a document lodged at the Court on 19 October 1981, the Commission emphasized that Step 8 is the final step in Grade 1 of Category C. Since the applicant's claims concerning *inter alia* her remuneration for the period preceding her resumption of duty on 1 December 1978 were rejected by the Court as inadmissible, the Commission maintained that the applicant could obtain nothing more by continuing the proceedings. For that reason, the Commission requested the Court to declare that the application was devoid of purpose on the ground that the

applicant no longer had an interest in pursuing the proceedings and to declare that it was unnecessary to give a decision on the points at issue.

7. In a written reply to a question put to her by the Court, the applicant stated on 25 February 1982 that she had a genuine interest in a decision by the Court on the substance of the case.

By order of 6 May 1982, the Court (Second Chamber) decided to reserve for the final judgment its decision on the request for a declaration that it is unnecessary to give a decision on the points at issue.

8. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (Second Chamber) decided to open the oral procedure without any preparatory enquiry.

II — Conclusions of the parties

In her reply, the *applicant* claimed that the Court should uphold her claim for:

Reinstatement in her career without any break in continuity as regards seniority in the service and with the following progression in salary classes:

C 1/6 as from 1 October 1973,

C 1/7 as from 1 October 1975,

C 1/8 as from 1 October 1977.

Furthermore, she expressed the hope that the Court would recognize in part her financial entitlements, which were inseparable from recognition of her seniority.

The *Commission* contends that the Court should:

Primarily, declare that the application is devoid of purpose on the ground that the applicant no longer has an interest in pursuing the proceedings, and declare that it is unnecessary to give a decision on the points at issue;

In the alternative, dismiss the application as unfounded;

In any event, order the applicant to pay the whole of the costs.

III — Submissions and arguments of the parties

A — *The request for a declaration that it is unnecessary to give a decision on the points at issue*

1. The *Commission* contends that the Court must declare that the application is devoid of purpose on the ground that the applicant no longer has an interest in pursuing the proceedings. The substantive issue still to be decided following the Court's judgment of 14 July 1981 concerns solely the calculation of the applicant's seniority in the step for the purposes of her remuneration, whilst any reinstatement in her career for the period prior to 1 December 1978 is now out of the question. On 1 November 1979 the applicant advanced to Step 8 which is the final step in Grade C 1. Thus, the applicant was, at the time when she effectively resumed her duties on 1 December 1978, only one year away from the peak of her career bracket in financial terms. She could therefore have had no other interest than for her advancement to Step 8 to be brought forward by a year. Since in its proposal the appointing authority backdated the applicant's seniority in Step 8 to 1 December 1978, there are no further advantages which the applicant can obtain.

2. In the *applicant's opinion*, in its judgment of 14 July the Court declared her application for reinstatement in her career and for a proper assessment of her seniority in the service to be admissible. Accordingly, since the present dispute does not relate exclusively to seniority in the grade but rather to seniority in the service, the applicant has a material interest in continuing the proceedings.

Furthermore, the objection lodged by the applicant on 26 May 1979 against her classification in the step in reality extended to all the financial consequences of that classification. Furthermore, the judgment of 14 July 1978 in which the applicant was acquitted did not become final until 27 December 1979 when the public prosecutor discontinued the proceedings. Consequently, the applicant's complaint of 7 November 1979 can in no way be regarded as lodged out of time.

Finally, the Commission has never adopted an express decision in relation to the applicant's complaints, except as regards the suspension of her remuneration.

B — Substance

1. The *applicant* relies on three submissions:

- (a) Infringement of Article 60 of the Staff Regulations, inasmuch as that provision is inappropriate for the final settlement of this dispute. Furthermore, it seems to have been applied incorrectly since it regulates — on a provisional basis only — cases of unauthorized absence and it is clear from its wording that

circumstances justifying absence may be taken into consideration.

- (b) Breach of general legal principles governing the application of the Treaties and of secondary Community legislation, inasmuch as the applicant's absence was attributable to *force majeure* or, at least, to necessity. Furthermore, the administration has contravened the principle of proportionality, in the first place, by failing to take any disciplinary action against the applicant and, secondly, by causing the applicant to bear certain rather serious consequences, namely the loss of four years' salary and seniority;
- (c) Breach of fundamental rights and of the Convention for the Protection of Human Rights and Fundamental Freedoms, inasmuch as it guarantees *inter alia* the right to protection against arbitrary arrest and detention.

2. The *Commission* considers that it has taken sufficient account of the applicant's individual circumstances. Hence it denies any infringement of Article 60 of the Staff Regulations or of general legal principles. Article 60 embodies a more general and fundamental principle of the Staff Regulations, namely that the benefit of remuneration is strictly conditional upon the actual performance of official duties.

Nor has the principle of proportionality been contravened. Although it is true that an official who is suspended as a result of disciplinary proceedings retains at least part of his salary, the possibility under Article 76 of the Staff Regulations

of granting "gifts, loans or advances" to an official or to a former official who is in a particularly difficult position made it possible to mitigate the consequences of the application of Article 60.

Finally, the applicant cannot, in the present case, rely on the Convention for the Protection of Human Rights and Fundamental Freedoms since no action or conduct restricting the applicant's liberty is ascribable to the Commission.

IV — Oral procedure

At the sitting on 28 April 1983, oral argument was presented by G. Marchesini of the Milan Bar for the applicant and by P. De Caterini for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 19 May 1983.

Decision

1 By an application lodged at the Court Registry on 13 June 1980, Miss Maria Mascetti, a temporary servant at the Ispra Joint Research Centre brought an action seeking, in the first place, annulment of the decision of the Commission refusing to regard the period of absence of the applicant between December 1974 and November 1978 as a period of employment for all purposes and, secondly, a declaration that the Commission is bound to reinstate her in her career and consequently to restore her financial rights, that is to say to give her the benefit of all the two-yearly steps, salary and insurance contributions which became due during her absence and also the shortfall of her severance grant as a member of the establishment staff and, finally, not to reduce her pension rights in any way on the ground of her absence.

2 The absence of the applicant, who was at that time a member of the establishment staff at the Ispra Joint Research Centre and was classified as from 1 October 1973 in Step 6 of the grade corresponding to C 1, was due to the fact that she left Italy to evade execution of a warrant issued for her arrest in connection with criminal proceedings. In January 1975 the Commission, considering the applicant's absence to be unauthorized, suspended payment of her salary, relying on Article 60 of the Staff Regulations of officials which is applicable by analogy to members of the establishment staff. However, in March 1977, following a change in the

Conditions of Employment of Other Servants, which discontinued the classification of members of the establishment staff, a temporary servant's contract was offered to the applicant, assigning her to Category C, Grade 1, Step 7, with effect from 30 October 1976. The applicant accepted that offer but stated that she was unable to go to Ispra to sign the contract. For its part the administration notified the applicant that the contract could be entered into as soon as she was in a position to report for work.

- 3 Following her acquittal by the Corte di Assise, Rome, by judgment of 14 July 1978, the applicant resumed work towards the end of 1978. On 30 November 1978 she signed a first temporary servant's contract which assigned her to Category C, Grade 1, Step 6, with seniority in her grade from 1 December 1978 and seniority in her step from 1 September 1977. For the calculation of her seniority, the contract thus left out of account her entire period of absence. She objected to those terms and the administration prepared a new contract which was signed by the applicant in April 1979. That contract backdated her seniority in the grade to 30 October 1976 and assigned her to Step 7 as from 1 November 1977. On 26 May 1979 the applicant objected in writing to that classification, but by letter of 10 August 1979 the administration confirmed her seniority in the step as specified in the latter contract, in which account had been taken of the period of absence prior to the date on which the conditions applicable to members of the establishment staff were superseded.

- 4 On 7 November 1979 the applicant sent the administration a further letter which contained all the claims at issue. Since that letter evoked no reply, she brought the present action.

- 5 In its interlocutory judgment of 14 July 1981 (Case 145/80 [1981] ECR 1975), the Court declared that the action was admissible with regard to the claim relating to seniority in the step. With regard to the other heads of

claim relating to the payment of salary, pension rights, social security contributions and compensation for termination of the employment contract as a member of the establishment staff, the Court held that since the applicant had allowed a year to elapse before making the claims contained in her letter of 7 November 1979, it was clear that those claims had been submitted out of time. In so far as those claims were concerned therefore, the Court dismissed the application as inadmissible.

6 In the light of that judgment, the Commission offered to insert an additional term in the applicant's contract classifying her in Step 8 as from 1 December 1978, the date on which she actually resumed her duties. That proposal was rejected by the applicant who therefore decided to continue the proceedings.

7 In its defence, the Commission considered the importance of seniority in the step with regard to the applicant's present and future position. Since Step 8 is the final step in Grade 1 of Category C, the effect of backdating the applicant's seniority in that step to the date on which she actually resumed her duties is to accord to her the highest salary in that category. The promotion procedure takes account of seniority in the service and in the grade but never of seniority in the step. Seniority in Step 8 of Grade 1 of Category C is of no importance for the purposes of classification in Category B in the event of the applicant's being transferred to Category B. Furthermore, her pension rights and her entitlement to other social security benefits are based solely on the actual length of service and on the contributions paid. Even under the special conditions tried out in the past with a view to facilitating the resignation of officials, seniority in the step was never taken into consideration. Accordingly, the applicant has no material interest in being classified in Step 8 before the date proposed by the Commission. For that reason, the Commission requests the Court to declare that the application is devoid of purpose since the applicant no longer has an interest in pursuing the proceedings and to declare that it is unnecessary to give a decision on the points at issue.

8 The applicant claims reinstatement in her career without any break in continuity as regards seniority in the service. She points out that, in view of her seniority as from 1 October 1973, referred to above, she should be

classified in Step 7 as from 1 October 1975 and in Step 8 as from 1 October 1977. Furthermore, she expressed the hope that the Court would recognize in part her financial entitlements, which are inseparable from recognition of her seniority.

- 9 In support of her claim, the applicant maintains that, in its interlocutory judgment, the Court declared her application for reinstatement in her career and for a proper assessment of her seniority in the service to be admissible. Consequently, the dispute does not relate exclusively to seniority in the step and in the grade but rather to seniority in the service, a factor which is of undeniable importance as regards her career, even though it has no immediate financial consequences. To justify the hope expressed by the applicant regarding her financial entitlements, she contends that her letter of 7 November 1979 can in no way be considered to be out of time since the objection lodged by her on 26 May 1979 against her classification in the step in reality extended to all the financial consequences of that classification. Moreover, the judgment of 14 July 1978 by which the applicant was acquitted did not become final until after the applicant had submitted her application in November 1979. Finally, the Commission did not at any stage adopt an express decision in relation to the majority of the applicant's complaints. In the light of all the above circumstances, the applicant claims that she has a sufficient material interest in continuing the proceedings.

- 10 The applicant's reasoning cannot be accepted. In its interlocutory judgment the Court categorically declared that every claim other than that concerning seniority in the step was inadmissible and the applicant has not sought to rely upon any fact not already disclosed before that judgment was given which might be of such a nature as to justify any review thereof.

- 11 Furthermore, the Commission has shown, without being effectively contradicted by the applicant, that the backdating of her classification in Step 8 of Grade C 1 beyond the date proposed by the Commission would not confer any real advantage on her, either in financial terms or with regard to her future career.

- 12 In those circumstances, the applicant's claims are devoid of purpose and it is therefore unnecessary for the Court to give a decision thereon.

Costs

- 13 Under Article 69 (5) of the Rules of Procedure, where a case does not proceed to judgment the costs are to be in the discretion of the Court.
- 14 However, under Article 70 of the Rules of Procedure, in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Declares that it is unnecessary to give a decision on the points at issue.
2. Orders the parties to bear their own costs.

Pescatore

Due

Bahlmann

Delivered in open court in Luxembourg on 14 July 1983.

J. A. Pompe
Deputy Registrar

P. Pescatore
President of the Second Chamber