

JUDGMENT OF THE COURT (First Chamber)
6 February 1986 *

In Case 162/84

Androniki Vlachou, a probationary official of the Court of Auditors of the European Communities, residing at 21 rue Bertels, Luxembourg, represented and assisted by Victor Biel of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 18 A rue des Glacis,

applicant,

v

Court of Auditors of the European Communities, represented by its Secretary, Jean-Aimé Stoll, acting as Agent, and by Henry Marty-Gauquie, acting as Deputy Agent, assisted by Lucette Defalque of the Brussels Bar, with an address for service in Luxembourg at its seat, 29 rue Aldringen,

defendant,

APPLICATION for the annulment of the decision not to admit the applicant to Competition No CC/LA/4/83 or for the annulment of that competition,

THE COURT (First Chamber)

composed of: R. Joliet, President of Chamber, G. Bosco and T. F. O'Higgins, Judges,

Advocate General: C. O. Lenz

Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 28 November 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 an application lodged at the Court Registry on 26 June 1984, Mrs Androniki Vlachou, a probationary official of the Court of Auditors of the European Communities, brought an action for the annulment of the decision of the Selection Board in Competition No CC/LA/4/83 (an inter-institutional competition based on qualifications and tests), notified to her on 30 September 1983, not to admit her to the competition. The application also seeks the annulment of that competition, which the Court of Auditors organized in order to fill a vacancy for a Greek head of section/reviser in its Language Service.
- 2 In her reply, Mrs Vlachou stated that her second claim should be regarded as an alternative claim to the first and at the hearing she finally declared that she would no longer pursue that part of her application.
- 3 Although the statements made by the applicant at the hearing do not clearly manifest her intention to abandon her claim for the annulment of the competition, nevertheless the action must be regarded as being directed solely against the Selection Board's decision not to admit her to the competition. The applicant cannot seek primarily the annulment of a decision not to admit her to a competition and, as an alternative claim, in the event that her principal claim is dismissed, the annulment of the competition.
- 4 In support of her application, Mrs Vlachou argues first of all that the Selection Board acted in breach of the principle of legitimate expectation in so far as the decision not to admit her to the competition was contrary to promises of establishment which senior officials of the Court of Auditors gave Mrs Vlachou, who had been recruited as a member of the temporary staff and was still a temporary employee at the time when the competition began.

- 5 The Court of Auditors contends in reply that the applicant has not adduced any evidence proving that those promises were made and that even if they were made they cannot give rise to a legitimate expectation on the part of the person to whom they were given.
- 6 As far as this point is concerned, it must be observed that, according to Article 29 of the Staff Regulations, the competition procedure is the only procedure, except in the case of posts in Grade A 1 or A 2 or, in exceptional circumstances, posts requiring special qualifications, under which an appointment may be made to a post of official in the Community institutions and that the provisions governing that procedure are binding on both the appointing authority and the Selection Board. Promises which do not take account of those provisions cannot therefore give rise to legitimate expectation on the part of the person concerned, even if it is proved that they were made, which is not the case in this instance.
- 7 In her second submission, Mrs Vlachou contends that the Selection Board wrongly took the view that she did not satisfy the requirements for entering the competition.
- 8 According to paragraph V.2. of the notice of competition, to be admitted to the competition candidates had to have 'at least 10 years' practical experience at senior level, in work related to the post to be filled'.
- 9 The first paragraph of Article 5 of Annex III to the Staff Regulations, which deals with 'competitions', provides that after examining the candidates' files, the Selection Board is to draw up a list of candidates who meet the requirements set out in the notice of competition.
- 10 As appears from the minutes of its first meeting held on 16 September 1983, the Selection Board found that none of the candidates fulfilled the admission requirements and in particular the condition laid down in paragraph V.2. of the notice of competition.
- 11 The Court of Auditors has stated during the proceedings that the Selection Board interpreted that condition as requiring candidates to have at least 10 years' practical experience as a reviser.

- 12 Mrs Vlachou, however, argues that it cannot be inferred from the wording of paragraph V.2. of the notice that 10 years' experience as a reviser was required but only that some experience of revision was essential in order to carry out the work involved in the post to be filled by the competition.
- 13 For its part, the Court of Auditors states that candidates' experience had to be of a qualitatively high level so as to make it possible to ensure their suitability for executive and administrative duties. The nature of the post to be filled therefore logically required the Selection Board to require candidates to have significant experience as a reviser.
- 14 It is therefore necessary to establish first of all whether paragraph V.2. of the notice of competition had to be interpreted as meaning that the practical experience required in order to be admitted to the competition had to consist of work as a reviser.
- 15 It is clear that the Selection Board answered that question in the affirmative. If it had taken the view that the wording of paragraph V.2. was open to different interpretations, it would have laid down at its first meeting the definition of the term 'practical experience' to be adopted for the purposes of admission to the competition. In fact, the minutes of the Selection Board's first meeting of 16 September 1983 contain no reference to such a step.
- 16 Paragraph IV of the notice of competition defines the nature of the duties attached to the post of head of section/reviser as follows:
- to head the Greek translation section;
 - to revise translations and, if necessary, produce translations not requiring revision;
 - to supervise terminological, documentation or other specialist work in the linguistic field;
 - to participate in the training of translators.
- 17 Since those duties involve heading a translation section composed of a number of translators and revisers, they necessarily require the head of section to have professional experience as a reviser. The work of a head of language section also

includes organizing the running of the section, having regard to the different kinds of work to be done, distributing work between revisers and supervising their output, so that it is clearly inconceivable that such tasks, which require extensive knowledge of every aspect of revision work, could be carried out by someone with no experience in that field.

- 18 In any event, as the Court of Auditors rightly pointed out at the hearing, that requirement is recognized by the Community institutions' practice of stipulating experience as a reviser whenever a post of head of section has to be filled by promotion or competition.
- 19 In the light of those considerations, it must therefore be held that the very nature of the post to be filled in Competition No CC/LA/4/83 demanded that the term 'practical experience' which appeared in paragraph V.2. of the notice of competition be interpreted as meaning experience as a reviser.
- 20 It follows that under the terms of the notice of competition the Selection Board was under an obligation to require candidates to have at least 10 years' experience as a reviser and that, contrary to the applicant's view, it had no power to determine at its discretion the length of such experience which could be regarded as sufficient for the purposes of admission to the competition.
- 21 The submission that the conditions for admission to the competition were not observed must therefore be rejected.
- 22 In the light of the foregoing, it is also not possible to uphold the submission based on the fact that the Selection Board decided that Mrs Vlachou did not satisfy the admission requirements laid down in Notice of Competition No CC/LA/4/83 although a few months earlier she had been admitted to Competition No CC/LA/20/82 for which the admission requirements were identical and the principle that, according to the decided cases of the Court, a candidate cannot be appraised less favourably, as far as admission requirements are concerned, than he was in a previous competition, unless the statement of the reasons on which the decision is based clearly justifies such a difference of appraisal.

- 23 In fact, as the Court of Auditors has rightly pointed out, the admission requirements in this case are not identical. It is true that the notices of competition both refer to 'practical experience at senior level, in work related to the post to be filled', but the post in relation to which the experience must be defined is clearly not the same. The competitions to which the applicant refers relate to two quite different posts, as is made clear by the description of duties given in each of the notices of competition: reviser/translator in Competition No CC/LA/20/82 and head of translation group/reviser in Competition No CC/LA/4/83.
- 24 Finally, Mrs Vlachou submits that there has been a misuse of powers inasmuch as a requirement of 10 years' experience as a reviser was deliberately adopted so that the competition procedure did not lead to the establishment of a list of suitable candidates since it was obvious that because of the quite recent date of Greece's accession to the Communities no candidate could show experience as a reviser with the Community institutions of sufficient length to satisfy that requirement.
- 25 In reply the Court of Auditors argues that there is no indication at all in the notice of competition that the relevant experience had to have been acquired in the Community institutions. Candidates could therefore provide proof of experience acquired in Greek public administration or in the private sector. It adds that the Selection Board imposed no requirement to the effect that such experience had to have been acquired within the Communities.
- 26 So far as that submission is concerned, it should first be pointed out that, as it is related to the notice of competition, its real object is the annulment of the competition and it cannot therefore be examined in the context of an action which, as has been stated above, seeks only the annulment of the Selection Board's decision not to admit the applicant to the competition in question. In so far as the submission is directed against that decision, it need only be stated that the applicant has adduced no evidence of a misuse of powers to her detriment and that no suggestion of such a misuse of powers can be deduced from the contested decision itself in view of the fact that the applicant's period of employment outside the Community institutions could not in any case suffice, either by itself or together with her experience acquired in the Community institutions, to satisfy the admission requirements laid down in the notice of competition.

- 27 Since the applicant has not succeeded in showing that any of the submissions on which she relies in order to contest the decision not to admit her to the competition is well founded, her application must be dismissed.

Costs

- 28 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, according to Article 70 of the Rules of Procedure, the institutions are to bear their own costs in proceedings commenced by officials.

On those grounds,

THE COURT (First Chamber)

hereby:

- (1) Dismisses the application;**
- (2) Orders the parties to bear their own costs.**

Joliet

Bosco

O'Higgins

Delivered in Luxembourg in open court on 6 February 1986.

P. Heim
Registrar

R. Joliet
President of the First Chamber