

ORDER OF THE COURT (First Chamber)
18 November 1999 *

In Case C-431/98 P,

Nicolaos Progoulis, an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by K. Adamantopoulos and V. Akritidis, of the Athens Bar, with an address for service in Luxembourg at the Chambers of E. Arendt and C. Medernach, 8-10 Rue Mathias Hardt,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (First Chamber) of 21 September 1998 in Case T-237/97 *Progoulis v Commission* [1998] ECR-SC I-A-521 and II-1569, seeking to have that order set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by J. Currall, Legal Adviser, acting as Agent, assisted by B. Wägenbaur, Rechtsanwalt, Hamburg,

* Language of the case: French.

with an address for service in Luxembourg at the office of C. Gómez de la Cruz,
of its Legal Service, Wagner Centre, Kirchberg,

defendant at first instance,

THE COURT (First Chamber),

composed of: L. Sevón (Rapporteur), President of the Chamber, P. Jann and
M. Wathelet, Judges,

Advocate General: A. La Pergola,

Registrar: R. Grass,

after hearing the views of the Advocate General,

makes the following

Order

- 1 By application lodged at the Registry of the Court of Justice on 30 November 1998, Mr Progoulis brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and Euratom Statutes against the order of the Court of First Instance of the European Communities (First Chamber) of 21 September 1998 in Case T-237/97 *Progoulis*

v *Commission* [1998] ECR-SC I-A-521 and II-1569 (hereinafter 'the contested order'), in which the Court of First Instance dismissed as manifestly inadmissible his application for annulment of the Commission's decision of 13 May 1997 rejecting his complaint seeking reclassification, with retroactive effect from 1 March 1983, in grade B 1, step 2 (hereinafter 'the contested decision').

Facts

- 2 The contested order shows that Mr Progoulis passed open competition COM/B/362 organised by the Commission in 1982 for the constitution of a reserve list of grade B 2 and B 3 assistants of Greek nationality.
- 3 By decision of 9 March 1983, which took effect on 1 March 1983, he was appointed a probationary official, with the status of assistant, and classified in grade B 3, step 2.
- 4 The next day, 10 March 1983, he submitted an initial request pursuant to Article 90(1) of the Staff Regulations of officials of the European Communities ('the Staff Regulations') for a review of his classification.
- 5 By letter of 13 July 1983 the appointing authority confirmed its decision.
- 6 On 10 October 1983 Mr Progoulis lodged a complaint in respect of the appointing authority's decision, alleging that it had failed to take into account the length of his compulsory military service.

- 7 By decision of 18 November 1983, which took effect on 1 December 1983, he was established as an official.
- 8 By decision of 20 January 1984, which took effect on 1 March 1983, the appointing authority, in response to the complaint of 10 October 1983, annulled the instrument of appointment of 9 March 1983 and classified Mr Progoulis in grade B 3, step 3.
- 9 On 5 December 1991 Mr Progoulis submitted a second request for review of his classification, in which he sought, pursuant to the second subparagraph of Paragraph 1(b) of Annex II to the Commission's decision of 6 June 1973 on the criteria applicable to appointment in grade and classification in step on recruitment ('the decision of 6 June 1973'), reclassification in grade B 2 or, if that were refused by the Commission, reclassification in grade B 1, since, he maintained, a precedent already existed for the reclassification of an official in a new career bracket.
- 10 By letter of 6 April 1992 the appointing authority rejected that request, observing, in particular, that it had been submitted out of time.
- 11 On 2 July 1992 Mr Progoulis lodged a complaint against that decision of the Commission.
- 12 On 6 October 1992 the appointing authority rejected the complaint as inadmissible, on the ground that it sought to call in question the classification decision of 20 January 1984 and was therefore out of time.
- 13 Mr Progoulis did not bring proceedings in respect of that decision rejecting his complaint.

- 14 On 6 May 1994 he submitted a third request for reclassification, in which he referred, in particular, to the judgment of the Court of First Instance in Joined Cases T-103/92, T-104/92 and T-105/92 *Baiwir and Others v Commission* [1993] ECR II-987.
- 15 That request was refused by the appointing authority on 12 July 1994.
- 16 On 10 October 1994 Mr Progoulis lodged a complaint in respect of that refusal and sought reclassification in grade B 1, step 2, with retroactive effect from 1 March 1983, together with a determination of the pecuniary effects resulting from that measure plus interest.
- 17 The appointing authority rejected that complaint on 20 March 1995.
- 18 On 19 June 1995 Mr Progoulis brought an action before the Court of First Instance, registered as Case T-131/95, in which he contested the decision of 10 October 1994 rejecting his complaint.
- 19 By order of 15 December 1995 in Case T-131/95 *Progoulis v Commission* [1995] ECR-SC I-A-297 and II-907, the Court of First Instance dismissed that action as inadmissible and ordered Mr Progoulis, pursuant to the second subparagraph of the former Article 87(3) of the Rules of Procedure, to pay all the costs.
- 20 On 24 June 1996 Mr Progoulis submitted to the appointing authority a fourth request for a review of his classification, in which he asked the appointing

authority to take into account his 27 months' military service and to classify him in grade B 1, step 2, with retroactive effect from 1 March 1983.

21 That request was refused by decision of the Commission of 8 August 1996, on the ground that it had been submitted more than three months after the initial classification decision.

22 On 6 November 1996 Mr Progoulis lodged a complaint against that decision pursuant to Article 90(2) of the Staff Regulations.

23 The Commission thereafter adopted the contested decision, by which it rejected that complaint.

24 By application lodged at the Registry of the Court of First Instance on 12 August 1997, Mr Progoulis brought proceedings for annulment of that decision.

25 By the contested order, the Court of First Instance declared the action manifestly inadmissible.

The contested order

26 In the proceedings before the Court of First Instance, Mr Progoulis stated that, for the purposes of rejecting his application for review of his classification, the appointing authority had applied the Commission's decision of 1 September 1983

on the criteria applicable to appointment in grade and classification in step on recruitment ('the decision of 1 September 1983'). He therefore took the view that the judgment of the Court of First Instance in Case T-17/95 *Alexopoulou v Commission* [1995] ECR-SC I-A-227 and II-683 constituted a new fact enabling him to challenge the terms of his initial classification.

- 27 In paragraph 36 of the contested order, the Court of First Instance observed that the contested decision merely confirmed the initial classification decision of 2 March 1984, which was adopted pursuant to the decision of 6 June 1973.
- 28 The Court of First Instance proceeded, in paragraphs 38 to 41 of the contested order, to examine whether the judgment in *Alexopoulou*, cited above, constituted a material new fact causing time to start running afresh for the purposes of bringing proceedings. It held that it did not, basing its reasons for that assessment on paragraphs 39 to 45 of its order in Case T-16/97 *Chauvin v Commission* [1997] ECR-SC I-A-237 and II-681.
- 29 In paragraph 42 of the order in *Chauvin v Commission*, cited above, the Court of First Instance pointed out that, in its judgment in *Alexopoulou*, it had not annulled the decision of 1 September 1983, although it had held that certain of its provisions were inapplicable in the case before it. It also observed, in paragraph 44 of the order in *Chauvin*, that, since the individual decision annulled by the Court of First Instance in its judgment in *Alexopoulou* was not of direct concern to Mr Chauvin, that judgment could not be regarded as a material new fact capable of causing time to start running afresh in his favour.

The appeal

- 30 Mr Progoulis relies on two pleas in support of his application for annulment of the contested order, the first of which alleges the commission by the Court of First

Instance of a manifest error of law in paragraphs 39 to 41 of that order and the second of which argues that those paragraphs do not contain an adequate statement of reasons. The appellant also requests the Court to give its own ruling on the dispute and to annul the contested decision.

- 31 By his first plea, Mr Progoulis complains that, by treating his situation as comparable to that of Mr Chauvin and by finding, for the reasons set out in paragraphs 39 to 45 of the order in *Chauvin*, that the judgment in *Alexopoulou* did not constitute a new fact capable of causing time to start running afresh for the purposes of the periods prescribed in Articles 90 and 91 of the Staff Regulations, the Court of First Instance committed an error of law.
- 32 Mr Progoulis argues that his case differs from that of Mr Chauvin, in that he is pleading as a material new fact not the finding by the Court of First Instance that certain provisions of the decision of 1 September 1983 were contrary to the Staff Regulations but the information, revealed by the judgment in *Alexopoulou*, that from 1 September 1983 onwards the Commission applied a restrictive policy as regards reclassification, even in relation to officials recruited prior to that date. According to the appellant, his classification in grade and step was necessarily governed by the decision of 6 June 1973, the second subparagraph in point 1(b) of Annex II to which provided that an official should automatically be reclassified in a higher grade where he had completed more than 24 months' military service, as in the case of the appellant. In addition, unlike Mr Chauvin, the appellant had contested his classification immediately after adoption of the classification decision.
- 33 By his second plea, Mr Progoulis complains that the Court of First Instance failed to give an adequate statement of the reasons for which the judgment in *Alexopoulou* did not constitute a material new fact in his particular case.

- 34 The Commission considers that the appeal is manifestly unfounded. It maintains that the judgment in *Alexopoulou* is not relevant to the appellant's case since it concerns the situation of an official appointed pursuant to the decision of 1 September 1983, whereas the appellant was appointed pursuant to the decision of 6 June 1973, as the Court of First Instance acknowledged in paragraph 36 of the contested order.
- 35 Article 119 of the Rules of Procedure of the Court of Justice provides that, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order.
- 36 It is settled case-law that only the existence of material new facts may justify the submission of a request for a review of a decision following the expiry of the time-limits prescribed by Articles 90 and 91 of the Staff Regulations.
- 37 It is apparent simply from reading the pleas put forward by the appellant that they are manifestly unfounded in two respects.
- 38 First, although the information resulting from the judgment in *Alexopoulou* on which the appellant relies in seeking a review of his classification is the existence, from 1 September 1983 onwards, of a restrictive practice with regard to reclassification which was applicable even to officials appointed before that date and which meant that, unlike other officials who had completed more than 24 months' military service, he was not automatically classified in a higher grade, that does not amount to a new fact.

39 The practice alleged by the appellant merely involved the application of the provisions of the decision of 1 September 1983. The existence of that decision was common knowledge, however, since it was brought to the attention of the staff by a publication dated 21 October 1983.

40 Second, Mr Progoulis' arguments are based on the premiss that, if the decision of 6 June 1973 had been applied to him, he would have been classified in the higher grade of the career bracket on account of his having completed over 24 months' compulsory military service.

41 Point 1(b) of Annex II to the decision of 6 June 1973 provides as follows:

'The duration of any military service completed pursuant to a legal obligation shall in principle be taken into account only for the purposes of possible seniority in step.'

However, an exception may be made to that principle, resulting in classification in the higher grade of a career bracket, where the duration of such service is equal to or greater than 24 months.'

- 42 Even on a superficial reading of that provision, it cannot justify the appellant's conclusion that any person who has completed a period of military service equal to or greater than 24 months should automatically be classified in the higher grade of a career bracket.
- 43 The second subparagraph in point 1(b) of Annex II to the decision of 6 June 1973 indicates that such a classification may only exceptionally be decided on by the appointing authority, which therefore enjoys a discretion in that regard.
- 44 It follows from all the foregoing that Mr Progoulis' appeal is manifestly lacking in any legal foundation and must be dismissed.

Costs

- 45 Under Article 69(2) of the Rules of Procedure, which, pursuant to Article 118, is applicable to the appeal procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 70 of those Rules provides that the costs incurred by the institutions in proceedings brought by officials are to be borne by the institutions. However, under the second paragraph of Article 122 of the Rules, Article 70 is not applicable to appeals brought against an institution by its officials or other servants. Since the Commission has applied for costs, and since the appellant has been unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby orders:

1. **The appeal is dismissed.**
2. **Mr Nicolaos Progoulis shall pay the costs.**

Luxembourg, 18 November 1999.

R. Grass

Registrar

L. Sevón

President of the First Chamber