ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
21 September 1998

Case T-237/97

# Nicolaos Progoulis
v
# Commission of the European Communities

(Manifest inadmissibility)



**Application for:** annulment of the decision of the Commission of 13 May 1997 rejecting the complaint against the decision rejecting the applicant's request for reclassification.

**Decision:** Application inadmissible.

## Abstract of the Order

By decision of 9 March 1983, which took effect on 1 March 1983, the applicant was appointed a probationary official of the Commission and classified in grade B 3, step 2. On 10 March 1983 he submitted a 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. On 13 July 1983 the appointing authority confirmed its decision. On 10 October 1983 the applicant lodged a complaint in respect of the appointing authority's decision, on the ground that it had failed to take into account the length of his compulsory military service.

By decision of 18 November 1983, which took effect on 1 December 1983, the applicant was established as an official. By decision of 20 January 1984, which took effect on 1 March 1983, the appointing authority – in response to the applicant's complaint of 10 October 1983 – annulled the instrument of appointment of 9 March 1983 and classified the applicant in grade B 3, step 3.

On 5 December 1991 the applicant submitted a request for reclassification in grade B 2, on the basis of the final subparagraph of Paragraph 1(b) of Annex II to the decision of 6 June 1973 on the criteria applicable to classification in grade and step upon recruitment, or, if that were refused, for reclassification in grade B 1, since, he maintained, a precedent already existed for the reclassification of an official in a new career bracket. That request was rejected on 6 April 1992. On 2 July 1992 the applicant lodged a complaint in respect of that decision; this was rejected on 6 October 1992 on the ground that it sought to call in question the classification decision of 20 January 1984 and was therefore out of time. The applicant did not bring proceedings in respect of that decision.

On 6 May 1994 the applicant submitted a fresh request for reclassification, which was refused on 12 July 1994. On 10 October 1994 the applicant lodged a complaint in respect of that refusal and sought reclassification in grade B 1, step 2, with retroactive effect from 1 March 1983. The appointing authority rejected that complaint on 20 March 1995.

On 19 June 1995 the applicant brought an action contesting the decision of 10 October 1994. By order of 15 December 1995, the Court declared that action inadmissible.

By decision of 7 February 1996, the Commission amended its decision of 1 September 1983 on the criteria applicable to classification in grade and step upon recruitment. The first paragraph of Article 2 of that decision henceforth reads as follows:

'A probationer shall be appointed to the starting grade of the career bracket in respect of which he is recruited. By way of exception to that principle, the appointing authority may decide to appoint the probationer to the higher grade of the career bracket where the specific needs of the service require the recruitment of a person with particular qualifications or where the person recruited possesses exceptional qualifications.'

On 24 June 1996 the applicant requested a review of his classification in grade upon his entering the service of the Commission. He requested the appointing authority to take into account his military service of 27 months' duration and to classify him in grade B 1, step 2, with retroactive effect from 1 March 1983. That request was refused by decision of 8 August 1996 on the ground that it had been submitted more than three months after the initial classification decision. On 6 November 1996 the applicant lodged a complaint in relation to that decision; this was rejected on 13 May 1997.

## Law

Under Article 111 of the Rules of Procedure, where an action is manifestly inadmissible or manifestly lacking any foundation in law, the Court of First Instance may, by reasoned order, and without taking further steps in the proceedings, give a decision on the action. In the present case, the Court considered that it had sufficient information available to it from the documents in the case, and decided that it was inappropriate to continue the procedure (paragraph 32).

A confirmatory measure cannot be actionable, since it does not have any adverse effect (paragraph 34).

See: 79/70 *Müllers* v *Economic and Social Committee* [1971] ECR 689, para. 20; T-14/91 *Weyrich* v *Commission* [1991] ECR II-235, para. 42; T-38/91 *Coussios* v *Commission* [1991] ECR II-763, para. 29; T-131/91 *Progoulis* v *Commission* [1995] ECR-SC II-907

The time-limits prescribed by Articles 90 and 91 of the Staff Regulations for lodging complaints and bringing proceedings are a matter of public policy and are not subject to the discretion of the parties or of the Court, since they were established in order to ensure that legal positions are clear and certain. Any exceptions to, or derogations from, those time-limits must be given a restrictive interpretation (paragraph 35).

See: T-16/97 *Chauvin* v *Commission* [1997] ECR-SC II-681, para. 32

The contested measure merely confirms the initial classification decision of 2 March 1984, which was adopted pursuant to the decision of 6 June 1973. The applicant did not contest that decision within the time-limits prescribed by the Staff Regulations.

By his request of 24 June 1996, the applicant was specifically seeking to call in question the conditions of his initial recruitment. Thus, the present action is intended to challenge a classification decision which has already been unsuccessfully contested several times by the applicant in pre-litigation procedures and judicial proceedings since its adoption in 1984 (paragraph 37).

An official cannot be permitted to challenge the conditions of his initial recruitment once that recruitment has become definitive. Only the existence of material new facts may justify the submission of a request for a review of a decision which has not been contested within the time-limits prescribed by Articles 90 and 91 of the Staff Regulations. It is therefore necessary to consider whether, as the applicant maintains, the judgment of the Court of First Instance in Case T-17/95 *Alexopoulou* v *Commission* [1995] ECR-SC II-683 constitutes a material new fact causing time to start running afresh for the purposes of bringing proceedings (paragraph 38).

See: 190/82 *Blomefield* v *Commission* [1983] ECR 3981, para. 10; *Chauvin* v *Commission*, cited above, para. 37

In its order in *Chauvin* v *Commission*, cited above (paragraphs 39 to 45), the Court of First Instance held that the judgment in *Alexopoulou* v *Commission*, cited above, did not constitute a new fact of that kind (paragraph 39).

Thus, the applicant has not put forward any new facts enabling the time-limits prescribed by Articles 90 and 91 of the Staff Regulations to start running afresh (paragraph 40).

It follows that the action must be dismissed in its entirety as manifestly inadmissible, without there being any need, as a preliminary step, to seek the observations of the Commission (paragraph 41).

**Operative part:**

**The action is dismissed as manifestly inadmissible.**