

JUDGMENT OF THE COURT OF FIRST INSTANCE (single Judge)
9 December 1999 *

(Staff case – Staff report – Description of duties)

In Case T-53/99,

Nicolaos Progoulis, an official of the Commission of the European Communities, represented by Vassilios Akritidis, of the Athens Bar, and Jonathan Branton, Solicitor, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented by Julian Currall, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the appointing authority of 17 November 1998 rejecting the applicant's complaint of 9 June 1998 in which the applicant sought the amendment of his staff report for the period 1 July 1995 to 30 June 1997, an order requiring the Commission to rectify the assessments of the applicant and to amend the description of duties given at paragraph 3(b) of the report as indicated by the applicant, and an award of compensation for non-material damage which he alleges he has sustained and which he assesses provisionally at BEF 100 000,

* Language of the case: English.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (single Judge),

J. Azizi, sitting as a single Judge,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 29 October 1999,

gives the following

Judgment

I – Facts

1 Since 1993 the applicant has been a category B official with Unit E.1 of Directorate-General XI, Environment, Nuclear Safety and Civil Protection (hereinafter 'DG XI'). In 1993 he was promoted to Grade B 2.

2 In the context of the implementation of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants (OJ 1984 L 188, p. 20), the defendant initiated, under the responsibility of Directorate-General XII, Research and Development Policy, a programme called the Steel Environment Programme (hereinafter 'the SEP'). It is apparent from the file that that programme consisted essentially in compiling an inventory of polluting emissions produced in the European Union by certain sectors of the steel industry, so that techniques for reducing those emissions might be identified and evaluated. The work carried out under the programme culminated in a conference in January 1996 and the publication in November 1996 of a report entitled 'Coordinated Steel Environment

Programme'. In 1996 DG XI expressed an interest in extending and assuming responsibility for the programme, in particular with a view to preparing an update of the inventory of polluting emissions for the year 1997. For budgetary reasons, that initiative was postponed.

- 3 On 2 October 1997, following discussions he had on 16 September 1997 and 1 October 1997 with his assessor, the Head of Unit E.1 in DG XI, the applicant received his staff report for the period 1 July 1995 to 30 June 1997. The report included, at point 3(b), the following description of the applicant's duties for the reference period:

'Mr Progoulis is responsible for the management of the budget of the Unit. This includes the elaboration and preparation of contracts for call for tenders as well as the whole follow-up, preparation of payments. Furthermore, he acts as liaison officer for training.'

- 4 By note dated 2 October 1997, the applicant informed his superiors that he could not accept his staff report.
- 5 Following a discussion with the appeal assessor on 6 October 1997, the latter informed the applicant, on 10 October 1997, that she had decided to supplement point 3(b) of the staff report by inserting the following description in an annex to the report: 'Mr Progoulis followed also a study "Steel Environment Programme", an inventory project led by DG XII and completed by two consultants mid-1996.' Appended to that description is a list of the people responsible for the study, among whom the applicant does not feature.
- 6 On 23 October 1997 the applicant referred the matter to the Joint Committee on Staff Reports (hereinafter 'the Committee') pursuant to Article 7 of the Implementing Provisions. He requested, first, that the description of his duties be supplemented to include a reference not only to his having followed the SEP, but also to his having campaigned for that programme to be continued after 1996, when

it was due to expire. Secondly, he requested that mention be made of his having participated in a study entitled 'The Best Available Technologies for the Prevention of Atmospheric Pollution in the Foundries of Ferrous Metals' (hereinafter 'the BAT study'). He also asked for his assessments to be reconsidered.

7 In its opinion of 2 March 1998, the Committee granted his request in so far as it related to the description of his duties. It took the view that 'paragraph 3(b) of his staff report should be expanded in the manner suggested by Mr Progoulis in his observations'. The remainder of the request was dismissed.

8 Following that opinion, the appeal assessor informed the applicant on 20 March 1998 that the wording of point 3(b) of the staff report had been amended as follows:

'Mr Progoulis is responsible for the management of the budget of the Unit. This includes the elaboration and preparation of calls for tender and contract documents as well as their follow-up and preparation of payments. Furthermore he acts as liaison officer for training. Between mid-1996 and mid-1997 Mr Progoulis acted as technical assistant for the matters related to the Steel Environment Programme.'

9 On 9 June 1998 the applicant lodged a complaint pursuant to Article 90 of the Staff Regulations. In that complaint, he reiterated his request for his assessments to be reconsidered and requested that the description of his duties be supplemented by two items, namely, a mention that he campaigned for the extension of the SEP, and a statement that he was involved as a technical assistant in dealing with questions concerning foundries.

10 On 16 September 1998 an inter-service meeting was held at which the applicant, his legal representative, members of the Personnel Committee and representatives of Unit E.1 of DG XI were present.

- 11 On 1 October 1998 the Committee gave its opinion on the applicant's complaint. The Committee confirmed its opinion of 2 March 1998 as regards amendment of point 3(b) of the staff report. As to the request for re-assessment, the Committee stated that it could not substitute its assessment for that of the assessor or the appeal assessor.
- 12 By decision of 17 November 1998, notified to the applicant on 2 December 1998, the appointing authority rejected the complaint in so far as it sought re-assessment of the applicant's grades. As regards the description of the applicant's duties, it was decided that the following sentence should be added to point 3(b) of the staff report: 'He was also following the study "Steel and Environment" and coordinating DG XI's input into this project.' After the various amendments, the description of duties contained in the applicant's staff report thus reads as follows:

'Mr Progoulis is responsible for the management of the budget of the unit. This includes the elaboration and preparation of calls for tender and contract documents as well as their follow-up and preparation of payments. Furthermore he acts as liaison officer for training. Between mid-1996 and mid-1997 Mr Progoulis acted as technical assistant for the matters related to the Steel Environment Programme. He was also following the study "Steel and Environment" and coordinating DG XI's input into this project.'

II – Procedure and forms of order sought

- 13 By application lodged on 19 February 1999 the applicant brought the present action. Pursuant to Articles 14(2) and 51 of the Rules of Procedure the Third Chamber delegated the case to Judge J. Azizi, sitting as a single Judge. The Court decided to open the oral procedure without any preparatory measures of inquiry. However, the Court requested the defendant to answer various questions and to produce certain documents, which it did in its rejoinder. The parties presented oral arguments and replied to the Court's oral questions at the hearing on 29 October 1999.

- 14 The applicant claims that the Court of First Instance should:
- (i) annul the version of his staff report decided upon by the appointing authority on 17 November 1998;
 - (ii) order the Commission to complete the description of duties in point 3(b) of the report as follows:
 - ‘(a) management of the budget of Unit XI-E-1;
 - (b) liaison officer for training;
 - (c) from the end of 1994 to mid-1996 he followed the Steel/Environment Programme – phase I 1991-1996 – led and finished by DG XII, he also followed the above programme for the same period on DG XI’s behalf assisting his direct superior officer for that programme;
 - (d) from 1996, as technical assistant, he campaigned for the continuation of the Steel/Environment Programme (as phase II) to be led by DG XI and run a new version for the 1997 emission inventory, as was intended on 18 January 1996 during the seventh and final coordinating Committee meeting, ECSC, phase I already led and finished by DG XII. The start of the continuation of that program was postponed for after 2001;
 - (e) from July 1996 until mid-1997 involved in the study “The Best Available Technologies for the Prevention of the Atmospheric Pollution in the Foundries of Ferrous Metals”;
 - (f) technical assistance for the questions relating to steel industry and the foundries as stated in his unit’s organigramme established by the assessor in March/April 1997’;
 - (iii) order the Commission to re-assess the applicant’s grading in the light of the description of duties set out above;
 - (iv) award him compensation for non-material damage suffered, estimated provisionally at BEF 100 000;
 - (v) order the Commission to pay the costs.

- 15 During the hearing, the applicant withdrew the heads of claim mentioned above under (ii) and (iii).

- 16 The Commission contends that the Court of First Instance should:
 - (i) dismiss the application;
 - (ii) make an appropriate order as to costs.

III – Admissibility

- 17 Without raising a formal objection as to admissibility, the defendant expresses doubt as to the applicant's legal interest in bringing proceedings. The defendant maintains that the applicant obtained full satisfaction from the amendments made to his staff report during the administrative procedure.

- 18 The applicant denies that he obtained satisfaction from the amendments made to his staff report during the administrative procedure.

- 19 The Court considers that, in the present case, the question whether the applicant obtained full satisfaction from the amendments made to his staff report during the administrative procedure concerns the substance and not the admissibility of the action. Therefore, the doubts expressed by the defendant as to the admissibility of the action for annulment must be rejected.

IV – The substance of the action for annulment

Arguments of the parties

- 20 According to the applicant, by adopting the staff report in its amended version of 17 November 1998, the defendant infringed the principles of legal certainty, good faith and the protection of legitimate expectations. It also made a manifest error of assessment of the facts and infringed Article 1 of the Implementing Provisions and Article 3(c)(ii) and (iii) of the Guide to Staff Reports.
- 21 The applicant maintains that the defendant simply copied earlier staff reports for the periods 1991 to 1993 and 1993 to 1995, merely downgrading the assessments. The defendant thus failed to comply with point 3(c)(iii) of the Guide to Staff Reports, which provides that a 'staff report should not be carried over more than once'. During the hearing, the applicant specified that this claim concerned only the analytical assessment in the staff report and not the qualitative assessment therein.
- 22 In addition, according to the applicant, point 3(b) of the staff report, which contains the description of the duties of the official assessed, remained incomplete notwithstanding the various amendments made to it. The applicant has identified three duties which he says he performed during the assessment period but which do not appear in the staff report.
- 23 First of all, after the end of the SEP in 1996, he campaigned for the extension of that programme under the responsibility of DG XI. The fact that that initiative was postponed does not make the applicant's contribution any less significant.
- 24 Secondly, the applicant says that he was involved in the BAT study which was carried out between December 1994 and July 1997 by the Comité des Associations Européennes de Fonderies (CAEF) on the basis of a contract signed with the Director-General of DG XI. The applicant asserted in his reply and further

explained during the oral hearing that there was no link between the SEP and the BAT study. Therefore, the BAT study could not be subsumed within the issue of the applicant's participation in the SEP but should rather have been mentioned separately.

- 25 Thirdly, the applicant maintains that, independently of his involvement in the SEP, he acted as a technical assistant in respect of questions related to the steel industry and foundries. Concerning the substance of this task the applicant explains in his reply that his unit was consulted for its opinion on the environmental implications of investment projects in the steel sector. In his view, it is apparent from the various consultation notes drafted by the applicant and signed by his Head of Unit that this task was carried out by the applicant in person, quite independently of his participation in the SEP, which is why the SEP was never mentioned in those notes.
- 26 The defendant refutes the applicant's pleas and arguments.

Findings of the Court

Introduction

- 27 Value judgments relating to officials in staff reports are not subject to review by the Court except as regards any irregularities of form or manifest errors of fact vitiating the assessments made by the administration or any misuse of power (see Case T-326/94 *Dimitriadis v Court of Auditors* [1996] ECR-SC II-613, paragraph 104).
- 28 In the present case, the applicant advances in substance two pleas alleging, firstly, that the appointing authority merely copied earlier staff reports with regard to the applicant's grading and, secondly, that the description of his duties in the staff report remained incomplete.

First plea

29 With respect to the first plea, the Court observes that the assessment made by the hierarchical superiors of the applicant, in their capacity as assessors, is a matter for their personal judgment alone, and that it is not for the Court to substitute its own assessment for theirs (see Case T-33/90 *von Bonkewitz-Lindner v Parliament* [1991] ECR II-1251, paragraph 62). The fact that, compared with previous periods, the assessor has come to a similar assessment of the applicant, merely lowering his grades, does not necessarily represent a manifest error of fact or misuse of power. In any event, there is no question of such a serious error having occurred in the specific circumstances of this case. Indeed, as the two parties confirmed during the hearing, the method of assessment had been altered since those previous periods and the tasks of the applicant, as described in those reports, changed in that time. In view of those circumstances, the applicant is also wrong in his assertion (see above, paragraph 21) that the defendant acted contrary to the Guide to Staff Reports by carrying over a previous staff report for a second time.

30 The first plea must therefore be rejected as unfounded.

Second plea

31 The second plea is presented in three parts. The Court considers it appropriate to examine the first and the third parts together.

– The applicant's involvement in the moves to extend the SEP after 1996 (first part) and the technical assistance in respect of questions relating to the steel industry and foundries (third part)

32 The Guide to Staff Reports, which serves within the Commission as a guide for assessors and from which, as the principle of equality of treatment requires, the administration may not depart without specifying the reasons for doing so (Case T-63/89 *Latham v Commission* [1991] ECR II-19, paragraph 25), includes the following guidance on how the official's duties are to be described in the staff report:

'Description of duties assigned to and performed by the person assessed, including any carried out in other departments, as identified during the dialogue' (paragraph 3(c)(ii)).

- 33 The Court observes in that respect that every official is entitled to have included in his staff report an accurate description of the main duties carried out by him during the relevant period (see, to that effect, *von Bonkewitz-Lindner*, cited above at paragraph 29, paragraph 44). It is necessary to examine whether the criticisms made by the applicant in these two parts of the plea reveal a manifest error of fact vitiating the assessment made by the administration.
- 34 With respect to the first part, concerning the applicant's involvement in the moves to extend the SEP after 1996 under the responsibility of DG XI, it should first be noted that the description of the applicant's duties comprises the following sentence: 'He was also following the study "Steel and Environment" and coordinating DG XI's input into this project.' Also, it is not denied that in 1996 DG XI expressed its interest in prolonging the programme and itself assuming responsibility for it and, moreover, that the applicant was coordinating these efforts for DG XI. Furthermore, the applicant has not contradicted the defendant's affirmation that this programme was not one of the main duties of the applicant even though he devoted a substantial amount of time to it.
- 35 As to the third part, concerning the applicant's ongoing activities as a technical assistant for questions relating to the steel industry and foundries, the Court observes that, as was confirmed by the applicant during the hearing, those activities related to environmental questions in the steel and foundries sectors. Therefore, even if they were not strictly part of the SEP, the fact that the appointing authority subsumed these activities within the 'matters related to the Steel Environment Programme' did not amount to a manifest error of fact. Furthermore, the only evidence that the applicant has submitted to the Court consists of three short consultation notes allegedly prepared by him but signed by his superiors. He has, on the contrary, neither proven nor advanced any consistent argument to the effect that this specific part of his activities was one of his main duties during the relevant period and had therefore to be mentioned explicitly and separately. In particular, the

Court considers that the fact that this activity is stated in his job description in the unit's organigramme does not necessarily mean that this element should be included in his staff report. In fact, it could well be that an element specifically noted in the unit's organigramme for an official does not constitute a main duty of that official during a particular period. This latter argument must therefore also be rejected.

- 36 Finally, with respect to these two parts of the second plea, the Court observes that the applicant has not put forward any argument to the effect that the absence of an explicit and separate mention of those two elements would have vitiated the assessment made by the administration.
- 37 In those circumstances, the Court considers that the appointing authority did not make a manifest error of fact in not mentioning those two elements explicitly and separately in the description of duties in the applicant's staff report.
- 38 The first and third parts of the second plea must therefore be rejected as unfounded.

– The applicant's involvement in the BAT study (second part)

- 39 The Court observes that the rule requiring consistency between the complaint and the application makes it a condition of admissibility that the claim put forward before the Community judicature already have been raised in the administrative complaint, so that the appointing authority was in a position to know in sufficient detail the criticisms which the person concerned was making of the contested decision (see, in essence, Case T-58/91 *Booss and Fischer v Commission* [1993] ECR II-147, paragraph 83, and Joined Cases T-178/95 and T-179/95 *Picciolo and Caló v Committee of the Regions* [1997] ECR-SC II-155, paragraph 60). Although the question of the admissibility of the second part of the second plea was not raised by the defendant at the appropriate time, it is for the Court to raise the matter of its own motion under the Rules of Procedure.

- 40 In that regard, the Court considers that, on the basis of the complaint lodged by the applicant on 9 June 1998, the appointing authority was not in a position, even endeavouring to interpret the complaint with an open mind, to know in sufficient detail the criticism which the applicant makes in this part of the second plea of the description of his duties in the contested staff report, namely that it did not mention his involvement in the BAT study. In fact, first of all, the complaint did not mention the BAT study at all. Furthermore, even if the complaint refers cursorily to the fact that the applicant was involved 'in the ferro-metal foundries from September 1996 until mid-1997', that statement did not give the appointing authority sufficient information about the apparent link between this task and the BAT study on the one hand and the alleged absence of any link between that study and the SEP on the other hand. Therefore, the appointing authority was not in a position to know that, apart from his involvement in 'matters related to the Steel Environment Programme', as was stated in the description of the applicant's duties according to the opinion of the appeal assessor (see above, paragraph 8), the applicant also asked for the introduction of a specific statement about his alleged involvement in the BAT study.
- 41 Accordingly, the Court considers that this part of the plea is inadmissible. In any event, it was only during the hearing that the applicant explained the reasons for which, according to him, there was, in fact, no link between the SEP and the BAT study.

Conclusion

- 42 In those circumstances, the application for annulment must be dismissed. Likewise, since the applicant has not succeeded in proving that the defendant's action was in any way unlawful, the claim for compensation must be dismissed.

Costs

43 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, Article 88 of those Rules provides that institutions are to bear their own costs in proceedings brought by servants of the Communities. In the present case, therefore, the parties must bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (single Judge)

hereby:

1. **Dismisses the action as inadmissible as far as the second part of the second plea is concerned;**
2. **Dismisses the remainder of the action for annulment as unfounded;**
3. **Dismisses the action for compensation as unfounded;**
4. **Orders the parties to bear their own costs.**

Delivered in open court in Luxembourg on 9 December 1999.

H. Jung
Registrar

J. Azizi
Judge