ORDER OF THE THIRD CHAMBER OF THE COURT
OF 18 NOVEMBER 1980 [1]

Margherita Hebrant, née Macevicius v European Parliament

Case 141/80

Officials — Applications to the Court — Act adversely affecting an official — Concept — Measures relating to the drawing up of the budget of an institution — Exclusion (Staff Regulations, Arts 90 (2) and 91 (1))

The proposals and decisions of the competent departments of an institution relating to the drawing up of its budget are not capable of affecting the position of officials under the Staff Regulations and consequently cannot constitute decisions adversely affecting officials within the meaning of Articles 90 (2) and 91 (1) of the Staff Regulations.

In Case 141/80

MARGHERITA HEBRANT, NÉE MACEVICIUS, an official of the European Parliament, represented by Victor Biel of the Luxembourg Bar, whose Chambers are at 18 A Rue des Glacis, Luxembourg,

applicant,

v

EUROPEAN PARLIAMENT, represented by F. Pasetti-Bombardella acting as Agent, Kirchberg, Luxembourg, assisted by A. Bonn of the Luxembourg Bar,

defendant,

1 — Language of the Case: French.

APPLICATION for the annulment of a recommendation for promotion,

THE COURT (Third Chamber)

composed of J. Mertens de Wilmars, President, O. Due and U. Everling, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

makes the following

ORDER

Facts and Issues

The applicant, Margherita Hebrant, née Macevicius, is a principal administrator in Grade A 4 at the European Parliament, the defendant. She is responsible for the Cataloguing Section of the Parliament's library, which falls under the Directorate-General for Research and Documentation. Mr Reid, also a principal administrator in Grade A 4, is in charge of the Reference, Information and Documentation Section.

In several preparatory documents relating to the budget and to the detailed list of posts at the Parliament, issued in particular by the Secretary General and the Committee on Budgets, reference had been made during the course of 1978 and 1979, amongst suggested alterations to the administrative structure, to the "conversion" of posts from A 5/4 to A 3 for the heads of the Cataloguing Section and the Reference, Information and Documentation Section.

In a memorandum dated 5 September 1979 for the attention of the Secretary General of the Parliament regarding the adoption of the 1980 budget, Mr Taylor, the Director-General for Research and Documentation, referring to the budgetary limits fixed by the Parliament by a resolution dated 10 May 1979, proposed only the conversion of the post of the head of the Reference, Information and Documentation Section to Grade A 3 for the budgetary year 1980, without mentioning the Cataloguing Section. This proposal was then taken up and adopted by the Secretary General and the Committee on Budgets of the Parliament.

In a letter to the President of the Parliament dated 6 November 1979, which was registered on 12 November 1979, the applicant complained that the Cataloguing Section had not been taken into consideration as regards applications for conversion of posts. According to the applicant, this was the manifestation of a systematic administrative policy pursued by Mr Taylor with the object of regrading the post of the head of the Reference, Information and Documentation Section to the detriment of the Cataloguing Section.

By a letter dated 25 April 1980, the Secretary General of the Parliament acknowledged the receipt of the letter from the applicant "within the meaning of Article 25 of the Staff Regulations", and asked her for supplementary details.

On 14 July 1980, Vacancy Notice No 2677 was published for a post of head of division (career bracket A 3), a regraded post to be included on the detailed list of posts for the Directorate of the Reference, Information and Documentation Division.

In her action, which was brought by an application lodged at the Court Registry on 11 June 1980, the applicant claims that the recommendation that Mr Reid alone should be promoted to Grade A 3 should be annulled as being contrary to Articles 5 (3) and 45 of the Staff Regulations. Alternatively, the applicant claims that both persons in question, namely herself and Mr Reid, should be promoted to Grade A 3.

By an application received at the Court on 14 August 1980, the Parliament, in accordance with Article 91 of the Rules of Procedure, put forward an objection of inadmissibility against this action. The objection is based essentially on the following arguments: the applicant's letter dated 6 November 1979 did not constitute a complaint within the meaning of Article 90 (2) of the Staff Regulations; as the Secretary General's letter of 25 April 1980 initiated an inquiry, there was no decision, express or implied, to reject the complaint within the meaning of the second indent of Article 91 (2) of the Staff Regulations; the acts contested by the action could not be described as acts adversely affecting the applicant within the meaning of Articles 90 and 91 of the Staff Regulations, against which an application to the Court would lie.

The applicant replied to the objection of inadmissibility by a document lodged on 17 October 1980 setting out, in particular, the following arguments: the content of the letter dated 6 November 1979 clearly showed that it was a complaint and not simply a request under Article 25 of the Staff Regulations; as no reply to the complaint was received within the period fixed in the Staff Regulations, there had been an implied decision to reject the complaint, which was the proper subject of an action; as Mr Taylor had decided to recommend Mr Reid's promotion before any decision had been taken on the regrading of the post in question such promotion might be the subject of an action.

Decision

According to the provisions of Article 91 (3) of the Rules of Procedure, after the other party has put forward his submissions on the said objection of inadmissibility and the grounds for them, the remainder of the proceedings on the objection are to be oral unless the Court decides otherwise. The Court considers that in this case it has sufficient information and that there is no need for it to open the oral procedure.

The action is patently inadmissible.

In so far as the object of the action is the annulment of memoranda by Mr Taylor as well as reports by the Secretary General and the Parliament's Committee on Budgets, it is not directed against decisions of the appointing authority which constitute acts adversely affecting the applicant within the meaning of Articles 91 (1) and 90 (2) of the Staff Regulations. The proposals and decisions of the competent departments of the Parliament relating to the drawing up of the budget are not capable of affecting the position of the applicant or Mr Reid under the Staff Regulations. Even supposing that such proposals and decisions had, as the applicant alleges, the sole object of implementing the promotion of Mr Reid to the detriment of the applicant, those measures would, nevertheless, merely constitute purely preparatory acts to that intent, which cannot be the subject of an action.

The publication of Vacancy Notice No 2677 for the post of head of the Reference, Information and Documentation Division was subsequent to the bringing of the action. The vacancy notice was not the subject of a prior complaint on the part of the applicant. Consequently it cannot be the subject of the action.

In so far as the action seeks in the alternative the promotion of the applicant at the same time as that of Mr Reid, it must be held that in the absence of any application for that purpose, such promotion has not been the subject of an express or implied decision of rejection on the part of the appointing authority within the meaning of Article 90 (1) of the Staff Regulations.

The action must therefore be dismissed.

Pursuant to Articles 69 (2) and 70 of the Rules of Procedure, the parties must bear their own costs.

On those grounds,

THE COURT (Third Chamber),

upon hearing the opinion of the Advocate General,

hereby orders as follows:

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

2. **The parties shall bear their own costs.**

Luxembourg, 18 November 1980.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President