submitted before the Court of FirstInstance, which, under Article 49 of the Statute of the Court of Justice falls outside the jurisdiction of the Court of Justice.

2. In the context of an appeal, a plea based on the irregularity of the hearing of a witness by the Court of First Instance is manifestly inadmissible where the party in question, having had the opportunity to object to a witness in the circumstances provided for by Article 73 of the Rules of Procedure of the Court of First Instance, did not raise, at any time in the proceedings before that Court, any objection whatsoever to that hearing.

ORDER OF THE COURT
26 April 1993 *

In Case C-244/92 P,

Leonella Kupka-Floridi, represented by P. Gérard, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 Avenue Guillaume,

applicant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 1 April 1992 in Case T-26/91 between Leonella Kupka-Floridi and the Economic and Social Committee, seeking to have that judgment set aside,

the other party to the proceedings being:

Economic and Social Committee, represented by Bermejo Garde, acting as Agent, assisted by D. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Nicola Annecchino, a representative of the Commission's Legal Service, Wagner Centre, Kirchberg, which contends that the Court should dismiss the appeal in its entirety,

* Language of the case: French.

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray, (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: G. Tesauro,
Registrar: J.-G. Giraud,

having regard to Article 119 of the Rules of Procedure,

having regard to the Report for the Hearing and after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 26 May 1992, Ms Kupka-Floridi lodged an appeal under Article 49 of the (EEC) Statute of the Court of Justice against the judgment of 1 April 1992 by which the Court of First Instance dismissed her application for the annulment of the decision taken by the Economic and Social Committee to dismiss her at the end of her probationary period, for compensation for the damage suffered and for an opportunity to complete a second probationary period at the end of which her professional qualifications would be reassessed.

2 It appears from the judgment appealed against that Ms Kupka-Floridi was recruited on 1 October 1989 as a Grade LA 7 probationary official in the Italian translation division at the Economic and Social Committee. The probationary period was supervised by the head of that division, Mr Pertoldi. At the end of that probationary period, a report was drawn up for the purpose of informing the appointing authority, in this case the Secretary-General of the Economic and Social Committee, whether the applicant displayed the professional abilities required for

appointment as an established official. Following that report, which contained a negative opinion concerning her abilities, the Secretary-General decided on 27 June 1990 to dismiss the applicant. The applicant made a complaint against the decision to dismiss her on 24 September; when that complaint was dismissed, she lodged an application before the Court of First Instance for the annulment of that decision, for compensation for the damage suffered and for an opportunity to complete a second probationary period.

3 Before the Court of First Instance, the applicant relied upon various pleas in law, alleging failure to comply with an internal note from the Economic and Social Committee concerning the assessment of probationary officials, breach of the duty to have regard for the interests of officials by her immediate superiors, who did not give her any advice for improving her work, erroneous assessment of her conduct by the same superiors and breach of the right to a fair hearing as a result of the delay in notifying her of the report on her probationary period and in convening the Reports Committee.

4 Those pleas in law were declared unfounded by the Court of First Instance, which dismissed the application in its judgment of 1 April 1992; that judgment is based in certain respects on facts different from those which the applicant sought to establish.

5 The applicant now asks this Court to annul the judgment of the Court of First Instance on the general ground that it infringed Community law by dismissing her application. In support of her appeal, she reproduces the pleas in law put forward at first instance, including those which the Court of First Instance dismissed on the ground that they were based on facts which were not established, and adds to those pleas in law two new arguments based on the hearing of her Head of Division, Mr Pertoldi.

6 In order to decide on the appeal, a distinction must be drawn between the pleas in law already raised before the Court of First Instance and those relied upon for the first time before this Court.

Pleas already raised before the Court of First Instance

7 Under the first paragraph of Article 49 of the (EEC) Statute of the Court of Justice an appeal must be directed against a decision of the Court of First Instance, whether a final decision, a decision disposing of the substantive issues in part only or a decision disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

8 Under Article 51 of the (EEC) Statute of the Court of Justice, an appeal to the Court of Justice is limited to points of law and must be based on grounds of lack of competence of the Court of First Instance, breach of procedure before it which adversely affects the interests of the appellant or infringement of Community law by the Court of First Instance; similarly, Article 112(1)(c) of the Rules of procedure of the Court of Justice provides that the appeal must specify the pleas in law and legal arguments relied on in support of the forms of order sought by the appellant.

9 It follows from those provisions that an appeal must clearly state which aspects are criticized in the judgment which the Court is requested to set aside and the legal arguments which specifically support the request.

10 An appeal which simply repeats or, as in this instance, reproduces verbatim the pleas in law and arguments already submitted to the Court of First Instance, including those based on factual allegations expressly dismissed by that Court, does not meet that requirement; such an appeal merely seeks, in reality, reconsideration of the application submitted before the Court of First Instance, which, under Article 49 of the Statute, falls outside the jurisdiction of the Court of Justice.

11 The pleas in law raised by the applicant in the application and reproduced in the appeal must therefore be dismissed as manifestly inadmissible in accordance with Article 119 of the Rules of Procedure.

Pleas raised for the first time before the Court of Justice

2 The pleas raised by the applicant for the first time before the Court of Justice must next be considered.

13 The applicant argues first that, since he took part in drawing up the probationary report which was used as a basis for the decision to dismiss her, her Head of Division should have been considered a party to the dispute and, as a result, could not be heard by the Court of First Instance as a witness.

14 Regarding that point, it should be noted, without considering the substance of the plea, that Article 73(1) and (2) of the Rules of Procedure of the Court of First Instance contains the rules to be observed by a party wishing to object to a witness on the ground that he is not a competent or proper person to act as a witness or for any other reason. That provision explicitly provides that an objection to a witness must be raised within two weeks after service of the order summoning the witnesses (paragraph 2) and that the matter is to be resolved by the Court of First Instance (paragraph 1).

15 However, the applicant did not raise, at any time in the proceedings before the Court of First Instance, any objection to hearing Mr Pertoldi as a witness.

16 On the contrary, although the Registrar of the Court of First Instance informed her by registered letter on 13 January 1992 of that Court's intention to hear Mr Pertoldi and invited her to make any possible observations on that point before 17 January, the applicant, by fax of 16 January 1992, gave her full and complete agreement to the holding of that hearing.

17 Furthermore, on 17 January 1992, the Court of First Instance made the order summoning Mr Pertoldi to appear before it, and a copy of that order was notified the same day by the Registrar to the applicant, without the applicant expressing, within the time-limit provided for in the abovementioned provision, her intention to object to the witness.

18 Moreover, the applicant was represented at the hearing but did not at that time raise any objection against the testimony in issue.

19 It follows that, since no objection was raised against hearing Mr Pertoldi during the proceedings before the Court of First Instance, the applicant acquiesced in the hearing decided by that Court; consequently, the plea put forward by the applicant concerning that point must be dismissed as manifestly inadmissible.

20 The second plea in law put forward for the first time before the Court of Justice is based on the record of the hearing which she claims does not contain any reference to the oath which every witness is bound to swear on giving evidence in accordance with Article 68(5) of the Rules of Procedure of the Court of First Instance.

21 Regarding that issue, it should be noted that contrary to what the applicant asserts, the record does contain a reference to the witness swearing an oath in accordance with the aforementioned provision; according to that document, which bears the signature of the President of the Chamber and the Registrar of the Court and which was notified to the applicant by registered letter of 16 March 1992, the hearing took place on 12 February 1992 and the oath was sworn by the witness at 10.51 a. m.

22 That plea in law must therefore be dismissed as manifestly unfounded.

23 It follows from the foregoing considerations that the pleas in law put forward by the applicant in support of her appeal must be dismissed in accordance with Article 119 of the Rules of procedure as either manifestly inadmissible or manifestly unfounded.

Costs

24 Article 70 of the Rules of Procedure provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. However, under the second paragraph of Article 122 of those Rules, that rule does not apply in appeals brought by officials or other servants of an institution. Article 69(2), which provides that the unsuccessful party is to be ordered to pay the costs, must therefore be applied in such proceedings. In this case Ms Kupka-Floridi has been unsuccessful; she must therefore be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT

hereby orders:

1. The appeal is dismissed;

2. Ms Kupka-Floridi shall bear the costs of these proceedings.

Luxembourg, 26 April 1993.

J.-G. Giraud — Registrar

O. Due — President