JUDGMENT OF THE COURT (First Chamber)

26 May 2005 *

In Case C-301/02 P,

APPEAL under Article 49 of the EC Statute of the Court of Justice, brought on 26 August 2002,

Carmine Salvatore Tralli, represented by N. Pflüger, Rechtsanwalt, with an address for service in Luxembourg,

appellant,

the other party to the proceedings being:

European Central Bank, represented by V. Saintot and M. Benisch, acting as Agents, assisted by B. Wägenbaur, Rechtsanwalt, with an address for service in Luxembourg,

* Language of the case: German.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta (Rapporteur), S. von Bahr and K. Schiemann, Judges,

Advocate General: P. Léger,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 June 2004,

after hearing the Opinion of the Advocate General at the sitting on 17 February 2005,

gives the following

Judgment

1 By his appeal, Mr Tralli seeks annulment of the judgment of the Court of First Instance in Joined Cases T-373/00, T-27/01, T-56/01 and T-69/01 [2002] ECR-SC I-A-97 and II-453 ('the contested judgment') dismissing his actions for the annulment of a number of acts of the European Central Bank (ECB).

Law

2 The Protocol on the Statute of the European System of Central Banks and of the European Central Bank, annexed to the EC Treaty, ('the ESCB Statute') contains inter alia the following provisions:

'Article 12

...

12.3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

...

Article 36

Staff

36.1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.

...'

3 Under Article 36.1 of the ESCB Statute, the Governing Council adopted, on 31 March 1999, an amendment to the Decision of 9 June 1998 on the adoption of the Conditions of Employment for Staff of the European Central Bank (OJ 1999 L 125, p. 32; 'the Conditions of Employment'). Those Conditions of Employment, in the version applicable to the facts at issue, provide inter alia:

'9. (a) Employment relations between the ECB and its members of staff shall be governed by employment contracts issued in conjunction with these Conditions of Employment. The Staff Rules adopted by the Executive Board shall further specify the application of these Conditions of Employment.

...

10. (a) Employment contracts between the ECB and its members of staff shall take the form of letters of appointment which shall be countersigned by members of staff ... .

(b) Appointments may be subject to a probationary period in accordance with the provisions laid down in the Staff Rules. The probationary period shall in no circumstances exceed twelve months.

11. (a) Contracts of members of staff may be terminated by the ECB on a reasoned decision of the Executive Board in accordance with the procedure laid down in the Staff Rules and on the following grounds:

(i) in the case of continued unsatisfactory performance, ...

...

41. Members of staff may ask for an administrative review of complaints and grievances in respect of the consistency of actions taken in their individual cases with the personnel policy and conditions of service of the ECB, using the procedure laid down in the Staff Rules. Members of staff who remain dissatisfied following the administrative review procedure may use the grievance procedure laid down in the Staff Rules.

Such procedures may not be used to challenge:

...

(iii) any decision not to confirm the appointment of a member of staff serving a probationary period.

42. After all available internal procedures have been exhausted, the Court of Justice of the European Community shall have jurisdiction in any dispute between the ECB and a member or a former member of its staff to whom these Conditions of Employment apply.

Such jurisdiction shall be restricted to the legality of the measure or decision, unless the dispute is of a financial nature, in which case the Court of Justice shall have unlimited jurisdiction.'

4 Pursuant to Article 12.3 of the ESCB Statute, in 1999 the Governing Council adopted the Rules of Procedure of the ECB (OJ 1999 L 125, p. 34; 'the ECB Rules of Procedure'). Under the heading 'Conditions of Employment', Article 21 of those rules provides:

'21.1. The employment relationship between the ECB and its staff shall be determined by the Conditions of Employment and the Staff Rules.

21.2. The Conditions of Employment shall be approved and amended by the Governing Council upon a proposal from the Executive Board. The General Council shall be consulted under the procedure laid down in these Rules of Procedure.

21.3. The Conditions of Employment shall be implemented by Staff Rules, which shall be adopted and amended by the Executive Board.

21.4. The Staff Committee shall be consulted before the adoption of new Conditions of Employment or Staff Rules. Its opinion shall be submitted, respectively, to the Governing Council or the Executive Board.'

5 Pursuant to Article 21.3 of the ECB Rules of Procedure and to Article 9(a) of the Conditions of Employment, the Executive Board of the ECB adopted the European Central Bank Staff Rules ('the Staff Rules') which provide inter alia:

'2.1 Probationary period

The provisions of Article 10(b) of the Conditions of Employment are applied as follows:

2.1.1 Appointments shall be subject to a probationary period of three months unless the Executive Board decides to waive the probationary period. In exceptional circumstances the Executive Board may determine a probationary period longer than three months as set out in 2.1.2.a) below.

...

2.1.2 When the probationer is prevented by illness, accident, maternity or, in exceptional circumstances, special leave from performing his/her duties for a period of more than one month, the Executive Board may extend the probationary period accordingly.

In addition, the Executive Board may, in exceptional circumstances:

(a) extend the probationary period up to a maximum of twelve months; or

(b) extend the probationary period up to a maximum of twelve months and assign the probationer to another function.

2.1.3 During the probationary period the Executive Board may terminate the contract, giving one month's notice, should the probationer's performance or suitability prove inadequate.'

6 By Decision ECB/1999/7 of 12 October 1999, the ECB adopted, on the basis of Articles 8 and 24 of its Rules of Procedure, the Rules of Procedure of the Executive Board of the ECB (OJ 1999 L 314, p. 34).

7 That decision considered it 'necessary to establish ... a regime for the delegation of powers ... which preserve[s] the principle of the collective responsibility of the Executive Board'.

8 The decision provides inter alia:

'Article 1

Supplementary nature

This Decision shall supplement the Rules of Procedure of the European Central Bank. The terms in this Decision shall have the meaning which they have in the Rules of Procedure of the European Central Bank.

...

Article 5

Delegation of power

1. The Executive Board may authorise one or more of its members to take, on its behalf and under its responsibility, clearly defined management or administrative measures, including the use of instruments in preparation for a decision to be taken collectively by the members of the Executive Board at a later point in time and instruments implementing final decisions taken by the Executive Board.

2. The Executive Board may also ask one or more of its members, with the agreement of the President, to adopt (i) the definitive text of any instrument as defined in Article 5(1) on condition that the substance of such instrument has already been determined in discussion, and/or (ii) final decisions, where such delegation involves limited and clearly defined executive powers, the exercise of which is subject to strict review in the light of objective criteria established by the Executive Board.

3. The delegations and decisions adopted in accordance with Article 5(1) and (2) shall be recorded in the summary proceedings of the Executive Board meetings.

4. Powers conferred in this manner may be sub-delegated only as and when there is a specific provision to this end in the enabling decision.

...'

Facts

9 On 10 March 2000, the ECB published a vacancy notice for a post of security guard whose duties were essentially to monitor the accesses to the ECB building and to carry out security checks on reception of visitors.

10 By letter of 20 June 2000, the appellant was appointed to fill that post with effect from 1 July 2000. That letter of appointment stated that his employment contract was governed by the Conditions of Employment and the Staff Rules and that he was subject to a probationary period of three months.

11 On 21 August 2000, during an interview, the appellant's superior notified him that his performance failed to meet the standard required for the post in question.

12 The quality of that performance was also the subject of an interview held on 1 September 2000 between the appellant, his superior and two other members of staff, one of whom was the coordinator of security at the ECB.

13 On 8 September 2000, the appellant received a copy of an internal memo in which the coordinator of security at the ECB asked that superior to extend the probationary period. That memo stated that such an additional probationary period was necessary by reason of the appellant's failure to perform his duties satisfactorily and to allow him to undertake additional training relating to his main duties and to the ECB's security system. According to that memo, the appellant confirmed his

willingness to undertake such training and to accept an extension of his probationary period until 31 December 2000. The appellant confirmed in writing on that memo that he had taken note of it.

14 On 18 September 2000, the ECB notified the appellant by letter of the decision to extend his probationary period until 31 December 2000 ('the decision extending the probationary period'). He was also informed that the decision to confirm his appointment depended on the standard of his performance during the extended probationary period.

15 By letter of 29 November 2000, notified to the appellant on the same day and signed by both the Director-General for Administration and Personnel and the Head of the Staff Development Division, the appellant was informed of the Executive Board's decision to terminate his contract with effect from 31 December 2000 ('the decision to dismiss'). The ground for that decision was that, even during the extended probationary period, the appellant's performance had not improved enough to satisfy the minimum requirements for the post in question. In particular, the appellant showed deficiencies in implementing the security system of the ECB and in complying with the administrative and organisational working rules and procedures.

Procedure before the Court of First Instance

16 By application of 12 December 2000, the appellant brought an action before the Court of First Instance (Case T-373/00), seeking, inter alia, the annulment of the decision to dismiss.

17 The appellant also brought three other actions seeking, inter alia:

— annulment of the decision of the President of the ECB rejecting the appellant's complaint against the decision extending the probationary period (Case T-27/01);

— a declaration that the President of the ECB had unlawfully refrained from defining his position on the appellant's request for the decision to dismiss to be reviewed (Case T-56/01), and

— annulment of the decision of the President of the ECB rejecting his complaint against the decision to dismiss (Case T-69/01).

18 By order of 15 January 2002, those actions were joined for the purposes of the oral procedure. By the contested judgment, the Court of First Instance joined those actions for the purposes of the judgment in Case T-373/00 and held that there was no longer any need to adjudicate in Cases T-27/01, T-56/01 et T-69/01.

19 By the same judgment, the Court of First Instance decided that in Case T-373/00 the parties should bear their own costs, and that in Cases T-27/01, T-56/01 and T-69/01 the applicant should bear his own costs together with one third of the costs incurred by the ECB.

The contested judgment

20 In dismissing the action in Case T-373/00 on the substance, the Court of First Instance held, in the first place, that the plea of illegality raised by the applicant in regard to the rules on delegation of powers adopted by the ECB in the context of staff management was unfounded. Its grounds in that respect were the following:

> '43 According to the applicant, the Staff Rules have no basis in law. They comprise rules governing the members of staff of the ECB and should accordingly have been adopted, on the basis of Article 36.1 of the ESCB Statute, by the Governing Council on a proposal from the Executive Board, and not by the Executive Board, which had no powers in that field.
>
> 44 The short answer to that point is that, in the circumstances which gave rise to the judgment in *X* v *ECB* (Case T-333/99 [2001] ECR II-3021; [2001] ECR-SC I-A-199 and II-921), a plea of illegality having the same basis as that relied on by the applicant in the present case was raised before the Court of First Instance. In that judgment, the Court of First Instance essentially held, in paragraphs 96 to 109, that the Staff Rules are not vitiated by the illegality complained of by the applicant, inasmuch, in particular, as, under Article 21.3 of the Rules of Procedure of the ECB, the Governing Council has delegated to the Executive Board the power to determine the rules for the implementation of the Conditions of Employment, that is to say, the Staff Rules.'

21 In the second place, the Court of First Instance held that the plea in law put forward by the applicant, alleging contravention of the Conditions of Employment and the Staff Rules and breach of the principle of proportionality, was likewise unfounded.

22 The Court of First Instance observed, firstly, that that plea was divided into two parts, one part contesting the decision extending the probationary period and the other contesting the decision to dismiss. It then examined each of the grounds of complaint set out in those two parts.

23 Thus, the Court of First Instance held, in the first place, in paragraph 49 of the contested judgment, that the decision extending the probationary period had been adopted in accordance with the procedural rules applicable in this case. It held, in the second place, in paragraphs 51 and 52 of that judgment, that the ECB was entitled to extend that probationary period. In the third place, it pointed out, in paragraphs 56 and 57 of the same judgment, that the ECB was entitled to take the view that it was faced with exceptional circumstances in which the probationary period could be extended, as provided for in the second paragraph of Article 2.1.2 of the Staff Rules. As regards the decision to dismiss, the Court of First Instance observed, in the first place, in paragraphs 65 and 66 of the contested judgment, that the applicant was informed of the criticisms made in regard to the quality of his professional knowledge and performance. The Court noted, in the second place, in paragraph 73 of that judgment, that there was nothing to support the conclusion that the applicant was not given an opportunity to complete his probationary period under normal conditions. In the third place, in paragraph 81 of that judgment, it maintained that the ECB could not be accused of having terminated the applicant's contract in breach of his rights.

24 Finally, in ordering the applicant, in Cases T-27/01, T-56/01 and T-69/01, to bear his own costs together with one third of those incurred by the ECB, the Court of First Instance stated the following grounds:

> '99 The Court of First Instance considers, contrary to what the applicant contends, that it is wholly clear from Article 41(iii) of the Conditions of Employment that decisions to extend the probationary period and to dismiss during the probationary period can never be the subject of a request for pre-litigation

review and complaint. The object of each of those decisions was "not to confirm the appointment of a member of staff serving a probationary period" in terms of that provision.

100 Therefore, the bringing of the actions in Cases T-27/01 and T-69/01 caused the defendant to incur costs unreasonably.

101 As regards Case T-56/01, lodged with the Registry of the Court of First Instance on 13 March 2001, the applicant brought that action for a declaration of failure to act by reason of the lack of a response to the complaint made on 5 February 2000, where, first, that complaint was the subject of an implied rejection under Article 8.2.1 of the Staff Rules one month after the complaint was raised and, secondly, the President of the ECB rejected the applicant's complaint on 12 March 2001.

102 Therefore, without its being necessary to consider whether the action must be dismissed as being inadmissible by reason of failure to give formal notice before bringing an action for a declaration of failure to act, the fact remains that, when the action was brought in Case T-56/01, or at the very latest during the days immediately following that date, the applicant knew that the defendant had defined its position for the purposes of the second paragraph of Article 232 EC. However, he did not take the appropriate measures to avoid the defendant incurring costs unreasonably in relation to that action.

103 Accordingly, rather than ordering the defendant to pay the costs incurred by the applicant, as the latter requests, the applicant should be ordered to pay one third of the costs incurred by the defendant in Cases T-27/01, T-56/01 and T-69/01.'

The claims of the parties before the Court of Justice

25 The appellant claims that the Court should:

— set aside the contested judgment and annul the decisions of the ECB to extend the probationary period and to dismiss;

— order the ECB to pay the appellant, in respect of the period extending beyond 31 December 2000, his basic salary amounting to EUR 32 304.00 per annum together with the allowances and other items of remuneration provided for in the Conditions of Employment;

— order the ECB to pay the costs.

26 The ECB contends that the Court should:

— dismiss the appeal;

— order the appellant to pay the costs.

The appeal

27 In support of the forms of order sought by him, the appellant puts forward three pleas.

The first plea, relating to the rules on delegation of powers

Arguments of the parties

28 By this plea, the appellant submits, in essence, that the Court of First Instance erred in law by rejecting, in paragraphs 43 and 44 of the contested judgment, the plea of illegality relating to the second paragraph of Article 2.1.2 and to Article 2.1.3 of the Staff Rules. He bases his plea, essentially, on the following arguments.

29 The appellant submits, in the first place, that it follows from Article 36.1 of the ESCB Statute that the Executive Board of the ECB was not competent to lay down the conditions of employment of the staff and that that power belongs to the Governing Council.

30 In the second place, according to the appellant, Article 12.3 of the ESCB Statute does not authorise the Governing Council to delegate powers relating to the staff to the Executive Board.

31 In that regard, he adds that, even if the Governing Council was entitled to delegate to the Executive Board the power to lay down the conditions of employment of the staff, it should have done so expressly. The Court of First Instance did not examine that argument, but presumed the existence of an implied delegation under Article 21.3 of the ECB Rules of Procedure.

32 The appellant also submits that the Court of First Instance misinterpreted the case-law relating to Article 110 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') concerning the delegation of powers in the context of the Community civil service by stating, in paragraph 44 of the contested judgment, that the Governing Council was entitled to delegate to the Executive Board the power to adopt the Staff Rules. Finally, he observes that that judgment infringes the 'principle of institutional balance' in so far as the Court of First Instance endorsed the discretionary delegation of powers to bodies other than those established by primary legislation.

33 In the third place, the appellant takes the view that, by adopting Articles 2.1.2 and 2.1.3 of the Staff Rules, the Executive Board infringed Article 21.3 of the Rules of Procedure in so far as those articles are not simply measures which implement the Conditions of Employment, but self-standing substantive rules. Article 2.1.2 authorises a unilateral extension of the probationary period, and that power exceeds the scope of Article 10(b) of the Conditions of Employment.

34 The applicant adds, in that regard, that Article 2.1.3 of the Staff Rules introduces a cause of dismissal during that period, connected with inadequacy of the probationer's performance or suitability, which is different from that laid down in Article 11(a)(i) of the Conditions of Employment.

35 The ECB, for its part, maintains that none of the considerations put forward by the appellant in the first and second arguments is either relevant or well founded. It points out that, according to the case-law concerning the application of Article 110 of the Staff Regulations, the institutions are entitled to adopt general implementing provisions, provided that they do not restrict the scope of the Staff Regulations. Moreover, the conferring of certain powers on the Executive Board by the Governing Council is in accordance with the principle of institutional balance.

36 The ECB points out that the appellant does not specify which part of the contested judgment he seeks to call in question by his third argument. In any event, that argument is unfounded. The second paragraph of Article 2.1.2 and Article 2.1.3 of the Staff Rules are measures implementing Article 10(b) of the Conditions of Employment, which form an integral part of the employment contract. Moreover, Article 11 of the Conditions of Employment does not apply during the probationary period.

Findings of the Court

37 By his first plea, the appellant seeks, in essence, to establish that the Court of First Instance was wrong in holding that the rules governing delegation of powers in regard to staff within the ECB and the exercise of those powers by the latter's bodies concerned are lawful.

38 In that regard, it must be noted, as a preliminary point, that the Governing Council has been invested, under Articles 12.3 and 36.1 of the Protocol on the ESCB Statute,

with legislative power to adopt, on the one hand, rules of procedure to determine the internal organisation of the ECB and its decision-making bodies and, on the other, the conditions of employment of the staff of the ECB.

39 It should be pointed out that the powers of organisation and management thus defined correspond to those conferred on other institutions and bodies established under primary legislation (see, for example, with regard to the European Commission, the second paragraph of Article 218 EC).

40 In accordance with the enabling provisions cited above, the Governing Council adopted the Conditions of Employment of the ECB. The latter in turn provide for the Executive Board to be authorised to specify further, by means of the Staff Rules, the general rules for applying those Conditions of Employment.

41 As regards the conformity of that system of delegation of powers with Community law, it should be recalled that, as is clear from Case 9/56 *Meroni* v *High Authority* [1958] ECR 133, 151 and 152, the powers conferred on an institution include the right to delegate, in compliance with the requirements of the Treaty, a certain number of powers which fall under those powers, subject to conditions to be determined by the institution.

42 It is important to point out, in that regard, that, if the Court's reasoning in *Meroni* related to the delegation of powers, for the purpose of putting into effect certain

financial arrangements, to bodies established under private law, having a distinct legal personality, a Community institution or body must be entitled to lay down a body of measures of an organisational nature, delegating powers to its own internal decision-making bodies, in particular as regards the management of its own staff. As the Court held in paragraph 34 of its judgment in Case C-409/02 P *Pflugradt* v *ECB* [2004] ECR I-9873, a Community body entrusted with public interest responsibilities is authorised to lay down, by regulation, provisions applicable to its staff.

43 With regard to the conditions to be complied with in the context of such delegations of powers, it should be recalled that, as the Court held in *Meroni* (see [1958] ECR 149 to 152, 153 and 154), first, a delegating authority cannot confer upon the authority to which the powers are delegated powers different from those which it has itself received. Secondly, the exercise of the powers entrusted to the body to which the powers are delegated must be subject to the same conditions as those to which it would be subject if the delegating authority exercised them directly, particularly as regards the requirements to state reasons and to publish. Finally, even when entitled to delegate its powers, the delegating authority must take an express decision transferring them and the delegation can relate only to clearly defined executive powers.

44 As regards the delegations of powers effected within the ECB in regard to staff and in the light of the arguments advanced by the appellant in support of his first plea, the provisions adopted by the ECB in the context under consideration and the extent of the delegations effected in that connection are fully in conformity with the conditions set out in *Meroni* (see paragraph 41 of the present judgment).

45 So far as concerns the precision required in regard to the delegation of powers, the Governing Council, which is competent to adopt the conditions of employment of the staff and, in particular, the Conditions of Employment themselves, has expressly provided, in Article 21.3 of its Rules of Procedure, that it is for the Executive Board to adopt and amend the rules implementing the Conditions of Employment.

46 In those circumstances, the appellant's argument that the Court of First Instance misapplied the case-law relating to the interpretation of Article 110 of the Staff Regulations cannot be accepted. As is clear from paragraph 37 of the judgment in *Pflugradt* v *ECB*, cited above, in exercising their power to apply general implementing measures concerning staff, the position of the management bodies of the ECB is no different to that of the management bodies of other Community institutions and bodies in their relations with their staff. In that context and as regards the 'principle of institutional balance', it is sufficient to recall that that principle is intended to apply only to relations between Community institutions and bodies (see, inter alia, Case C-70/88 *Parliament* v *Council* [1990] ECR I-2041, paragraphs 21 to 23).

47 As regards the argument of misuse, by the Executive Board, of the executive powers granted by the Governing Council, it must be observed that Articles 2.1.2 and 2.1.3 of the Staff Rules laid down by the Executive Board provide for a number of circumstances which may arise during the probationary period. Those provisions permit, inter alia, both extension of the probationary period and termination of contract during that period.

48 It is important to note in this regard that Articles 2.1.2 and 2.1.3 of the Staff Rules remain within the limits of the executive powers conferred on the Executive Board by Article 21.3 of the ECB Rules of Procedure. Contrary to the appellant's argument, those provisions do not infringe Article 10(b) of the Conditions of Employment, which provides that the Executive Board may establish a system of probationary periods in accordance with the provisions laid down in the Staff Rules. Nor do the provisions at issue exceed the limits laid down by Article 11(a)(i) of the Conditions of Employment as regards the circumstances in which the ECB may terminate contracts concluded with its staff.

49 As the Advocate General rightly notes in point 39 of his Opinion, since the Executive Board is authorised, under Article 10(b) of the Conditions of Employment, to adopt detailed rules governing the probationary period, it remained within the limits of its powers in that context in providing that, in the course of that period, during which particular attention is paid to the performance of the employee concerned, a contract may be terminated 'should ... performance or suitability prove inadequate'.

50 It should be added that, as the Court of First Instance pointed out in paragraph 52 of the contested judgment, in a situation where the Executive Board may terminate the contract during the probationary period, it must a fortiori have the right to extend that period unilaterally.

51 It follows that both the rules governing the delegation of powers in relation to staff and the exercise of those powers by the ECB's bodies are lawful.

52 Consequently, the Court of First Instance was entitled to rule that the provisions adopted by the ECB in that regard are not vitiated by unlawfulness. The first plea is therefore unfounded.

The second plea, relating to Articles 2.1.2 and 2.1.3 of the Staff Rules

53 In the alternative, in the event that the Court accepts that Articles 2.1.2 and 2.1.3 of the Staff Rules are lawful, the appellant maintains that the Court of First Instance was wrong in holding, in paragraphs 46 to 83 of the contested judgment, that the decision to extend the appellant's probationary period and the decision to dismiss him accorded with the Conditions of Employment and the Staff Rules. That plea consists of five parts.

The first part

— Arguments of the parties

54 In the first part, the appellant submits that the Court of First Instance failed, in paragraph 49 of the contested judgment, to have regard to the fact that the decision to extend the probationary period had been adopted in contravention of Article 2.1.2 of the Staff Rules. The power to extend the probationary period belongs to the Executive Board and cannot be delegated to the Vice-President of the ECB.

55 The ECB contends, in that regard, that not only does no provision prohibit the Executive Board from organising the distribution of tasks among its members, but, on the contrary, its Rules of Procedure expressly provide for such delegations of authority.

— Findings of the Court

56 It must first be recalled that, as the Court of First Instance held in paragraph 49 of the contested judgment, by a decision of 16 March 1999 the Executive Board delegated to the Vice-President of the ECB the power to adopt decisions extending the probationary period of newly-recruited staff.

57 So far as the validity of that delegation of authority is concerned, it must be observed that, as the Advocate General rightly notes in points 48 to 54 of his Opinion, the Community institutions and bodies enjoy powers of internal organisation whereby their collegiate bodies may delegate to one or more of their members the power to adopt staff management decisions of an individual nature in a context which has already been the subject of general rules adopted by the collegiate body concerned.

58 According to settled case-law, the Community institutions and bodies have a wide discretion as regards their internal organisation on the basis of the responsibilities entrusted to them (see, inter alia, Case C-15/00 *Commission* v *EIB* [2003] ECR I-7281, paragraph 67, and *Pflugradt* v *ECB*, cited above, paragraph 43).

59 In particular, the Court has held (see, inter alia, Case 5/85 *AKZO Chemie* v *Commission* [1986] ECR 2585, paragraphs 35 to 37) that the Commission may, without undermining the principle of collegiate responsibility which governs its functioning, authorise its Members to adopt certain decisions in its name. That system of delegation of authority does not have the effect of divesting the Commission of its decision-making power since the decisions adopted by the Member are adopted in the name of the Commission, which is fully responsible for them. The Court based that assessment inter alia on the need to ensure that the decision-making body is able to function, which corresponds to a principle inherent in all institutional systems.

60 That case-law, which relates to the system of delegation of authority implemented within the Commission, can be applied in this case, given that the system in question does not have the effect of divesting the Executive Board of its rule-making power and that decisions to extend the probationary period adopted by the Vice-President of the ECB are adopted in the name of the Executive Board, which is fully responsible for them. The delegation of authority at issue is limited to individual decisions relating to the extension of the probationary period of a newly-recruited member of staff and does not in any way cover matters of a general nature.

61 In those circumstances, it must be concluded that the Court of First Instance was right to rule that the Vice-President of the ECB was entitled to adopt the decision extending the applicant's probationary period.

62 Accordingly, the first part of the second plea cannot be upheld.

The second part

— Arguments of the parties

63 In the second part of his plea, the applicant maintains that the Court of First Instance failed to assess properly, in paragraph 56 et seq. of the contested judgment, the ambiguous nature of the criteria for applying Article 2.1.2 of the Staff Rules, since those provisions could open the way to arbitrary measures and are, therefore, incompatible with 'superior rules of Community law'. The existence of doubt as to the abilities of the employee during the probationary period does not constitute an 'exceptional circumstance' as referred to in Article 2.1.2. The appellant adds that the Court of First Instance did not hold that that provision conflicts with the second sentence of Article 9(a) of the Conditions of Employment, since it is inappropriate for the purpose of further specifying the application of the latter.

64 The ECB takes the view that this argument is unfounded since the existence of an element of discretion cannot automatically mean that decisions are taken arbitrarily.

— Findings of the Court

65 It must be observed, as a preliminary point, that the use of the term 'exceptional circumstances' in Article 2.1.2 of the Staff Rules reflects the intention of the authority concerned, namely the Executive Board, to reserve to itself a discretion in determining, in the light of the facts of the case and the individual circumstances, in what circumstances an extension of the probationary period of a newly-recruited employee may be desirable.

66 Moreover, as rightly noted by the Advocate General in point 57 of his Opinion, decisions adopted on that basis are subject to judicial review. Furthermore, the possibility of extending the probationary period cannot be regarded a priori as detrimental to the probationer since it allows the introduction of aspects designed to improve the employment relationship in the interests of both parties concerned, and thus preserve that relationship.

67 It must therefore be concluded that the Court of First Instance was right to rule that the decision extending the applicant's probationary period was lawful.

68 Accordingly, the second part of the plea cannot be upheld.

The third part

— Arguments of the parties

69 In the third part of his plea, the appellant contests the finding of the Court of First Instance that the existence of doubts as to the ability to perform one's duties may constitute an 'exceptional circumstance' for the purposes of Article 2.1.2 of the Staff Rules.

70 The ECB states that the phrase 'exceptional circumstances' in Article 2.1.2 of the Staff Rules does not in any way mean that the institution is not required to state reasons for decisions taken in that context. In holding that the phrase in question requires the existence of objective conditions, the Court of First Instance laid down a criterion which precludes the adoption of an arbitrary decision.

— Findings of the Court

71 It should be recalled that, as noted in paragraph 58 of this judgment, the ECB enjoys wide discretion in the management of its staff so as to enable it to discharge the public service responsibilities conferred on it.

72 It follows that, particularly during the probationary period, a Community institution or body must satisfy itself that the probationer meets all the personal and professional requirements needed to fill the post for which he was recruited and to perform the duties connected with it. In that context, an extension of the probationary period may be an appropriate measure for that purpose.

73 Consequently, the Court of First Instance did not err in law by holding that the existence of doubts as to the ability of a newly-recruited employee could constitute an 'exceptional circumstance' for the purposes of Article 2.1.2 of the Staff Rules, justifying an extension of his probationary period.

74 The third part of the plea must therefore be rejected.

The fourth part

— Arguments of the parties

75 In the fourth part, the appellant contests the finding of the Court of First Instance that his probationary period was extended by reason of doubts as to his ability to

perform his duties. In that regard, the Court of First Instance based its view on incorrect facts, failing to have regard to the burden of proof and disregarding the ECB's statements that the extension of the probationary period was due to its own negligence in having failed to specify a more representative period of work outside the summer holiday period.

76 The ECB contends that this part of the second plea is inadmissible on the ground that it seeks to call in question the finding of the Court of First Instance that the decision extending the appellant's probationary period was based on doubts as to his ability to perform his duties. The ECB states in particular that the extension of the probationary period was intended to give the appellant the opportunity to adapt better to the working conditions and to familiarise himself with the requirements of service at the ECB.

— Findings of the Court

77 By this part of his plea the appellant seeks, in essence, to call in question a certain number of factual assessments made by the Court of First Instance.

78 It should be pointed out that, as the Advocate General rightly recalls in points 67 and 68 of his Opinion, it is settled case-law (see, for example, Case C-122/01 P *T. Port* v *Commission* [2003] ECR I-4261, paragraph 27) that the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the Court of First Instance accepted in support of those facts. Provided that the evidence has been properly obtained and that the general principles of law and the

rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it. That appraisal does not therefore constitute, save where the clear sense of the evidence has been distorted, a point of law which is subject to review by the Court of Justice.

79 In that regard, as the Advocate General stated in point 69 of his Opinion, in so far as the appellant has not established, or even seriously maintained, that the Court of First Instance distorted the facts and evidence produced before it, its assessment of the methods used to ensure the training of newly-recruited members of staff represents an appraisal of the facts and evidence which cannot be challenged on appeal.

80 In those circumstances, the fourth part of the plea must be held to be inadmissible.

The fifth part

— Arguments of the parties

81 In the fifth part, the appellant observes that, contrary to what the Court of First Instance held in paragraphs 70 to 73 of the contested judgment, he was not given an opportunity to complete the probationary period under normal conditions.

82 The ECB contends that this part is likewise inadmissible since it seeks to call in question the finding made by the Court of First Instance that the appellant's probationary period took place under normal conditions.

— Findings of the Court

83 In this regard, it is sufficient to note that, by his argument, the appellant seeks to challenge a finding of fact made by the Court of First Instance.

84 The Court of First Instance held, in paragraph 73 of the contested judgment, that 'there is nothing to support the conclusion that the applicant was not given an opportunity to complete his probationary period under normal conditions'.

85 In those circumstances and having regard to the considerations set out in paragraph 78 of this judgment, since no complaint of distortion has been put forward by the appellant, the fifth part of the plea must be rejected as inadmissible.

The third plea in law, relating to costs

Arguments of the parties

86 The appellant submits that the contested judgment is vitiated, in paragraphs 99 to 103, by an error of law inasmuch as it orders him to pay part of the costs in Cases

T-27/01 and T-69/01. He takes the view that the Court failed to interpret correctly the second paragraph of Article 87(3) of its Rules of Procedure by ruling that those actions had been brought without reasonable cause. As regards the action in Case T-56/01, the appellant explains that that action had been preceded by wrongful conduct on the part of the ECB.

87 The ECB contends that the plea is inadmissible in its entirety under the second paragraph of Article 51 of the Statute of the Court.

Findings of the Court

88 It should be recalled that, under the second paragraph of Article 51 of the Statute of the Court of Justice, 'no appeal shall lie regarding only the amount of the costs or the party ordered to pay them'. In addition, the Court has held that, where all the other pleas put forward in an appeal have been rejected, any plea challenging the decision of the Court of First Instance on costs must be rejected as inadmissible by virtue of that provision (see Joined Cases C-302/99 P and C-308/99 P *Commission and France* v *TF1* [2001] ECR I-5603, paragraph 31, and Joined Cases C-57/00 P and C-61/00 P *Freistaat Sachsen and Others* v *Commission* [2003] ECR I-9975, paragraph 124).

89 Since all the other pleas put forward in the appeal brought by the appellant must be rejected, the last plea, challenging the decision of the Court of First Instance on the allocation of costs, must accordingly be declared inadmissible.

90 It follows from all the foregoing considerations that the appeal must be dismissed.

Costs

91 Article 69(2) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 118 of those Rules, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 70 of those Rules, the institutions are to bear their own costs in actions brought by their servants. However, by virtue of the second paragraph of Article 122 of those Rules, Article 70 does not apply to an appeal brought by an official or any other servant of an institution against that institution. Since the ECB has applied for costs and the appellant has been unsuccessful, the appellant must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. Dismisses the appeal;

2. Orders Mr Tralli to pay the costs.

[Signatures]