

ORDER OF THE COURT (Third Chamber)  
13 September 2001 \*

In Case C-467/00 P,

Staff Committee of the European Central Bank, established in Frankfurt am Main, Germany,

Johannes Priesemann, member of staff of the European Central Bank, residing in Frankfurt am Main,

Marc van de Velde, member of staff of the European Central Bank, residing in Usingen-Kransberg, Germany,

and

Maria Concetta Cerafogli, member of staff of the European Central Bank, residing in Frankfurt am Main,

represented by N. Pflüger, R. Steiner and S. Mittländer, Rechtsanwälte, with an address for service in Luxembourg,

appellants,

APPEAL against the order of the Court of First Instance of the European Communities (Fourth Chamber) of 24 October 2000 in Case T-27/00 *Staff Committee of the ECB and Others v ECB* [2000] ECR-SC I-A-217 and II-987, seeking to have that order set aside,

\* Language of the case: English.

the other party to the proceedings being:

**European Central Bank**, represented by C. Zilioli, V. Saintot and M. López Torres, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, F. Macken (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

after hearing the Advocate General,

makes the following

### Order

- 1 By application lodged at the Court Registry on 27 December 2000, the Staff Committee of the European Central Bank ('the Staff Committee'), together with Mr Priesemann, Mr Van de Velde and Ms Cerafogli, members of staff of the

European Central Bank ('the ECB'), brought an appeal under Article 49 of the EC Statute of the Court of Justice against the order of the Court of First Instance of 24 October 2000 in Case T-27/00 *Staff Committee of the ECB and Others v ECB* [2000] ECR-SC I-A-217 and II-987 ('the contested order') by which it dismissed as inadmissible their application for annulment of Administrative Circular No 11/98 of the ECB Executive Board of 12 November 1998 concerning ECB internet usage policy.

## Legal background and facts of the case

2 The legal background and facts of the case are set out as follows in paragraphs 1 to 9 of the contested order:

'1 The Protocol on the Statute of the European System of Central Banks and of the European Central Bank... , annexed to the EC Treaty ("the Statute of the ESCB"), contains, in particular, the following provisions:

*"Article 35*

### Judicial control and related matters

35.1 The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice in the cases and under the conditions laid down in this treaty. The ECB may institute proceedings in the cases and under the conditions laid down in this treaty.

...

## *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.

36.2 The Court of Justice shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.”

- 2 The Conditions of Employment for Staff of the ECB (Decision of the ECB of 9 June 1998 on the adoption of the Conditions of Employment for Staff of the European Central Bank as amended on 31 March 1999; OJ 1999 L 125, p. 32; “the Conditions of Employment”) provide, in particular:

“Part 8

### Appeals and disciplinary procedures

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:

- (i) any decision of the Governing Council or any ECB policy, including any policy laid down in these Conditions of Employment or in the Staff Rules;
  - (ii) any decision for which special appeals procedures exist; or
  - (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 [*sic*] 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.

...

Part 9

Staff representation

...

46. The Staff Committee shall be consulted prior to changes in these Conditions of Employment, the Staff Rules and related matters as defined under paragraph 45 above.”

3 Those provisions are amplified by the ECB Staff Rules (“the Staff Rules”) which state, in particular, that:

“Part 8

Appeals and disciplinary procedures

...

8.2 Appeals to the Court of Justice of the European Union [*sic*]

The provisions of Article 42 of the Conditions of Employment are applied as follows:

8.2.1 Appeals to the Court of Justice of the European Community [*sic*] shall be filed within two months. This period shall begin:

on the date on which the member of staff concerned is notified of the final decision taken in a grievance procedure or on the date on which the period of one month which applies in the grievance procedure expires without such a decision having been taken. Nevertheless, when the final decision in a grievance procedure is taken after this one-month period but before the two-month period for filing an appeal has expired, the period for filing an appeal shall start to run afresh.”

4 Article 11.2 of the ECB Rules of Procedure of 22 April 1999, as amended [(OJ 1999 L 125, p. 34)], provides that “[w]ithout prejudice to Articles 36 and 47 of the Statute, the Executive Board shall enact organisational rules... Such rules shall be obligatory for the staff of the ECB.” Pursuant to that provision, on 12 November 1998, the Executive Board adopted Administrative Circular No 11/98 on ECB Internet usage policy (“the circular” or “the contested act”). That circular lays down and makes public the conditions under which Internet services are made available to ECB staff. It establishes the policy of the ECB on Internet usage and the rights and obligations of ECB members of staff related thereto. The circular was adopted without consultation with the ECB Staff Committee.

5 The circular was brought to the attention of members of staff in electronic form on 12 November 1998 and in hard copy the following day.

- 6 By letter of 20 December 1999, the ECB Staff Committee asked the Vice-President of the ECB, Mr Noyer, to withdraw the circular, on the ground that the Committee had not been consulted pursuant to Article 46 of the Conditions of Employment.
  
- 7 By letter of 10 January 2000, the Director-General of Administration and Personnel replied, stating that such rules were not subject to consultation with the Staff Committee.
  
- 8 In January 2000, the ECB Staff Committee collectively asked for an administrative review of the Executive Board decision adopting the circular.
  
- 9 However, without exhausting the internal administrative remedies provided for under Articles 41 and 42 of the Conditions of Employment and specified by Articles 8.1 and 8.2 of the Staff Rules, the ECB Staff Committee, on its own behalf, and three of its members, on an individual basis, brought the present action for annulment of the circular on the ground that the ECB Staff Committee had not been consulted before the adoption of that circular.'

### Procedure before the Court of First Instance and the contested order

- 3 By application lodged at the Registry of the Court of First Instance on 15 February 2000, the applicants claimed that the Court of First Instance should, *inter alia*, order the ECB to cease deriving the rights or obligations of its staff from Administrative Circular No 11/98, to withdraw that circular and to desist from adopting rules intended to govern the behaviour of its staff as a collective without those rules being the subject of consultation with the Staff



Committee, and confirm that Administrative Circular No 11/98 was null and void owing to the fact that it infringed the rights of the Staff Committee.

4 By document lodged on 18 May 2000, the ECB contended that the action was inadmissible. The applicants lodged their observations on the plea of inadmissibility on 26 June 2000.

5 As a preliminary point, in paragraph 15 of the contested order, the Court of First Instance rejected the applicants' argument that the ECB may not be represented by an agent.

6 As regards, first, the application for annulment of the contested act, in paragraphs 24 to 36 of the contested order, the Court of First Instance examined the last of three pleas raised by the ECB in support of its plea of inadmissibility, a plea alleging failure to comply with the time-limit for bringing an action. It undertook the assessment of that plea as follows:

'24 The contested act was adopted by the ECB on 12 November 1998. The individual applicants (Mr Priesemann, Mr Van de Velde and Ms Cerafogli) do not deny having been made aware of it on the same day. However, the Staff Committee asserts that, as a body, it has never received the circular.

25 As regards that assertion, the Court finds that the Staff Committee can act only through its representatives. Since its spokesperson, Mr Priesemann, was made aware of the circular on 12 November 1998, the Court finds that the ECB Staff Committee, as a body, was also made aware of it simultaneously.

- 26 Consequently, it is necessary to determine whether the present action was commenced within the prescribed time-limit.
- 27 The applicants brought the present proceedings pursuant to Article 236 EC and Article 36.2 of the Statute of the ESCB.
- 28 In this respect, it must be observed that Article 36.2 of the Statute of the ESCB refers, in respect of the conditions under which the Community judicature may have jurisdiction in a dispute between the ECB and its servants, to the Conditions of Employment.
- 29 In accordance with Article 42 of the Conditions of Employment, an action may be brought before the Community judicature only after all available internal procedures have been exhausted. It is common ground that the applicants did not pursue to the end the administrative review or grievance procedures provided for under Article 8.1 of the Staff Rules.
- 30 However, the applicants claim that they were permitted to bring an action before the Court of First Instance without exhausting the internal ECB procedures.
- 31 Even if, in order to challenge an administrative circular, it is not necessary to exhaust the internal ECB procedures, the two-month time-limit for bringing an action before the Court of First Instance, which is laid down in Article 8.2.1 of the Staff Rules implementing Article 42 of the Conditions of Employment, is applicable. Since the action was commenced more than 15 months after the adoption and publication of the contested act, it was brought out of time.

32 That interpretation is supported by the settled case-law of the Court of Justice according to which the strict application of the Community rules on procedural time-limits serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (see, in particular, the order in Case C-239/97 *Ireland v Commission* [1998] ECR I-2655, paragraph 7).

33 Finally, even if Article 35.1 of the Statute of the ESCB had to be applied, it must be recalled that that provision refers to the cases and conditions laid down in the Treaty and, as a consequence, to the fifth paragraph of Article 230 EC which provides that annulment proceedings are to be instituted within two months of the publication of the measure, or of its notification to the applicant, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be (order in Case T-33/99 *Méndez Pinedo v ECB* [2000] ECR-SC [I-A-63 and] II-273, paragraph 23).

34 It follows that, in all those situations, the action, which was commenced more than 15 months after the adoption and publication of the contested act, is out of time.

35 Accordingly, it is not necessary to examine the other pleas.

36 It is clear from the foregoing that the applicants' claim for annulment must be regarded, in any event, as out of time and, consequently, dismissed as inadmissible.'

7 As regards, second, the other heads of claim, the Court of First Instance held, in paragraph 37 of the contested order:

‘37 As regards the other claims, they seek the issue of directions from the Court of First Instance to a Community institution. Since, according to settled case-law, the Court of First Instance does not have jurisdiction to issue such directions, the other claims must be dismissed as inadmissible (see, for example, Case T-124/96 *Interporc v Commission* [1998] ECR II-231, paragraph 61).’

8 The Court of First Instance therefore dismissed the application as inadmissible and ordered the parties to bear their own costs.

## The appeal

9 By their appeal, in support of which they rely on three grounds, the appellants claim that the contested order should be set aside and that the form of order which they sought at first instance should be granted or, in the alternative, that the case should be referred back to the Court of First Instance.

10 The ECB contends that, by their appeal, the appellants are in fact seeking to have the Court of Justice re-examine the facts and arguments raised before the Court of First Instance, without giving a concrete indication of the infringement of law which the latter Court is alleged to have committed. It contends therefore that the appeal should be dismissed and that the appellants should be ordered to pay the costs.

- 11 Pursuant to Article 119 of the Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time by reasoned order dismiss the appeal without opening the oral procedure.

*The first ground of appeal*

- 12 By their first ground of appeal, which has four branches, the appellants assert that, although the Court of First Instance was correct in holding that their application had been brought pursuant to Article 236 EC and Article 36.2 of the Statute of the ESCB, it erred in considering that that application did not satisfy the conditions as to admissibility laid down in those provisions.

The first branch

- 13 By the first branch of this ground of appeal, the appellants complain that, in paragraph 31 of the contested order, the Court of First Instance held that the two-month time-limit for bringing an action, which is laid down in Article 8.2.1 of the Staff Rules, was applicable to the case before it. That provision concerns only disputes over individual rights, whereas the rights at issue in the present case are collective rights. Articles 42 and 45 of the Conditions of Employment allow for an action to be brought before the Court of First Instance on the subject of collective rights without any time-limit.
- 14 In that regard, it should be noted that the action before the Court of First Instance concerned a dispute between the ECB, and a number of its servants and the Staff Committee.

- 15 It is clear from Article 36.2 of the Statute of the ESCB that the Community judicature is to have jurisdiction in disputes between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment applicable to the servants of the ECB.
- 16 The conditions for bringing an action before the Community judicature, which are laid down in Article 42 of the Conditions of Employment and amplified in Article 8.2 of the Staff Rules, require, in particular, that actions be brought within two months.
- 17 As regards the Staff Committee, even if it had *locus standi* to contest before the Community judicature an act such as the circular, it would, in any event, be subject to a two-month time-limit for bringing an action, whether under Article 8.2.1 of the Staff Rules or Article 35.1 of the Statute of the ESCB and the fifth paragraph of Article 230 EC.
- 18 The Court of First Instance did not therefore err in law in holding, in paragraph 31 of the contested order, that the two-month time-limit for bringing an action was applicable before it.
- 19 The first branch of the first ground of appeal must therefore be rejected as clearly unfounded.

The second branch

- 20 By the second branch of the first ground of appeal, the appellants assert that the Court of First Instance failed to take into consideration the fact that Article 8.2.1

of the Staff Rules is null and void owing to an incurable defect of law in their adoption, because it did not comply with Articles 36.1 and 47.2 of the Statute of the ESCB. The ECB Executive Board adopted the Staff Rules without the participation of the ECB Governing Council or the ECB General Council and thus acted beyond its powers, in breach of those provisions.

- 21 In that regard, it is sufficient to note that at no time did the appellants raise such a defect before the Court of First Instance.
- 22 To allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the Court of First Instance would be to allow it to bring before the Court a case of wider ambit than that which came before the Court of First Instance. In an appeal the Court's jurisdiction is confined to review of the findings of the Court of First Instance on the pleas argued before it (see Case C-136/92 P *Commission v Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 59; and the order in Case C-111/99 P *Lech-Stahlwerke v Commission* [2001] ECR I-727, paragraph 25).
- 23 Since the second branch of the first ground of appeal was not raised before the Court of First Instance, it is clearly inadmissible.

The third branch

- 24 By the third branch of the first ground of appeal, the appellants submit, first, that they attempted to resolve the dispute within the ECB before commencing their

action before the Court of First Instance and, second, that the Conditions of Employment do not impose, in any event, an obligation to pursue an internal procedure before bringing an action before the Court of First Instance in the case of a dispute over collective rights.

25 As regards the first part of this branch, alleging compliance by the Staff Committee with internal procedures, it should be noted that it amounts to challenging the findings of fact of the Court of First Instance, set out in paragraph 29 of the contested order.

26 It is clear from Article 225 EC and Article 51 of the EC Statute of the Court of Justice that an appeal is to be limited to points of law. Accordingly, the Court of First Instance has sole jurisdiction to find and appraise the facts, except in a case where the factual inaccuracy of its findings is revealed by the evidence adduced before it. The appraisal of the facts does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (see Case C-53/92 P *Hilti v Commission* [1994] ECR I-667, paragraph 42; and Joined Cases C-280/99 P to C-282/99 P *Moccia Irme and Others v Commission* [2001] ECR I-4717, paragraph 78).

27 In the present case, since the appellants have not established that the clear sense of the evidence produced before the Court of First Instance was distorted, the first part of the third branch must be rejected as clearly inadmissible.

28 As to the second part of the third branch, it is irrelevant since, as was stated in paragraph 31 of the contested order, the action was commenced more than 15



months after the adoption and publication of the contested act and, in any event, a two-month time-limit for bringing an action was applicable, as has been stated in paragraphs 16 and 17 above.

- 29 The second part of the third branch must therefore be rejected.

The fourth branch

- 30 Finally, by the last branch of the first ground of appeal, the appellants submit that, in paragraph 25 of the contested order, the Court of First Instance made an error of law in considering that the Staff Committee, as a body, was aware of the circular because its representatives were themselves aware of it. Such reasoning has no foundation in law and leads to unacceptable results. According to the appellants, an act or omission on the part of an employer cannot be presumed to be known to the Staff Committee as long as one of its members or representatives, in that capacity, has not been informed of it.
- 31 In that regard, it is sufficient to point out that the Court of First Instance was fully entitled to hold, in paragraph 25 of the contested order, that the Staff Committee can act only through its representatives, with the result that it must be regarded as having been aware of the circular as soon as its spokesperson was himself made aware of it.
- 32 Since the appellants have not established that the Court of First Instance made an error of law in that regard, the fourth branch of the first ground of appeal must be rejected as clearly unfounded.

33 It follows from the foregoing that the first ground of appeal must be rejected as in part clearly inadmissible and in part clearly unfounded.

*The second ground of appeal*

34 By their second ground of appeal, the appellants challenge the reasoning of the Court of First Instance in paragraph 33 of the contested order on the ground that the fifth paragraph of Article 230 EC and the time-limits which it lays down cannot be applicable to an action challenging the circular. Such a circular is not a legislative act, whereas an action based on that provision can be brought only against legislative acts.

35 In that regard, it must be observed that, as is clear from the contested order, it was for the sake of completeness that the Court of First Instance dealt with the possible admissibility of the action under Article 35.1 of the Statute of the ESCB and, as a consequence, Article 230 EC.

36 In those circumstances, it is immaterial that, in addition, the Court of First Instance considered, in paragraph 33 of the contested order, that the appellants' action was out of time. Since that ground was supplementary, the criticisms levelled against it, even if made out, cannot cause the contested order to be set aside (see, to that effect, Case C-362/95 P *Blackspur DIY and Others v Council and Commission* [1997] ECR I-4775, paragraph 23).

37 The second ground of appeal is therefore irrelevant and must be rejected.

*The third ground of appeal*

38 By their last ground of appeal, the appellants assert that the Court of First Instance made an error of law in holding, in paragraph 37 of the contested order, that their claims that it should issue directions to the ECB were inadmissible because it did not have jurisdiction to issue such directions to a Community institution.

39 In that regard, the Court finds that, since it is established, having regard, in particular, to paragraph 28 above, that the action before the Court of First Instance was brought out of time, that ground is irrelevant and must therefore be rejected.

40 Consequently, the appeal must be dismissed as in part clearly inadmissible and in part clearly unfounded.

**Costs**

41 Under Article 69(2) of the Rules of Procedure, which is applicable to appeal proceedings pursuant to Article 118 thereof, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the ECB applied for costs against the appellants and since they have been unsuccessful in their appeal, they must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby orders:

1. The appeal is dismissed.
2. The Staff Committee of the European Central Bank, Mr Priesemann, Mr Van de Velde and Ms Cerafogli shall pay the costs.

Luxembourg, 13 September 2001.

R. Grass

Registrar

C. Gulmann

President of the Third Chamber