

JUDGMENT OF THE COURT (Sixth Chamber)
2 October 2001 *

In Case C-449/99 P,

European Investment Bank, represented by G. Marchegiani, acting as Agent,
assisted by G. Vandersanden, Avocat, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 28 September 1999 in Case T-140/97 *Hautem v EIB* [1999] ECR-SC I-A-171 and II-897, seeking to have that judgment set aside in part,

* Language of the case: French.

the other party to the proceedings being:

Michel Hautem, a member of the staff of the European Investment Bank, residing in Schouweiler, Luxembourg, represented by M. Karp and J. Choucroun, Avocats, with an address for service in Luxembourg,

applicant at first instance,

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris (Rapporteur), J.-P. Puissech, R. Schintgen and N. Colneric, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 1 February 2001,

gives the following

Judgment

- 1 By application lodged at the Registry of the Court of Justice on 26 November 1999, the European Investment Bank ('the Bank') brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 28 September 1999 in Case T-140/97 *Hautem v EIB* [1999] ECR-SC I-A-171 and II-897 ('the judgment under appeal') in so far as the Court of First Instance annulled the Bank's decision to dismiss Mr Hautem and ordered it to pay him the arrears in remuneration which he should have received since his dismissal.

Legal framework

- 2 The Statute of the Bank is laid down in a Protocol annexed to, and forming an integral part of, the EC Treaty.
- 3 Article 9(3)(h) of the Statute of the Bank provides that the Board of Governors is to approve the Rules of Procedure of the Bank. The Rules of Procedure were approved on 4 December 1958 and have since undergone a number of amendments. Article 29 provides that the Staff Regulations of the Bank are to be fixed by the Board of Directors.

4 The Staff Regulations of the Bank were approved on 20 April 1960 and then amended on a number of occasions. The Bank's staff are subject to the obligations laid down in those Regulations.

5 Articles 1, 4 and 5 of the Staff Regulations of the Bank, which come under the heading 'General provisions', read as follows:

'Article 1

Members of staff shall conduct themselves in the discharge of their duties and outside working hours in a manner befitting the international character of the Bank and their duties.

...

Article 4

Members of staff shall devote their working activities to the service of the Bank. Except with prior permission of the Bank, they shall not:

- (a) engage in any professional activity outside the Bank, particularly of a commercial nature, nor hold any post or appointment either permanent, temporary, occasional, paid or unpaid;

(b) act in any advisory capacity, paid or unpaid;

(c) hold a seat on any Board of Directors or any Management Committee.

...

Article 5

Members of staff shall declare their family circumstances once yearly, and whenever there is any change in them, together with, where appropriate, mention of their spouse's profession and any post or appointment in which the latter is gainfully employed.

In the event of marriage between two members of staff working in the same division, one of them will be transferred to another division.'

6 Article 13 of the Staff Regulations of the Bank provides:

'Relations between the Bank and the members of its staff shall, in principle, be governed by individual contracts in conjunction with these Staff Regulations. The Staff Regulations shall be an integral part of these contracts.'

- 7 Point 3 of the first paragraph of Article 38 of the Staff Regulations of the Bank provides:

‘The following disciplinary measures may, depending upon individual cases, be taken against members of staff who fail to fulfil their obligations to the Bank:

...

(3) summary dismissal for grave misconduct, with or without severance grant’.

- 8 The first paragraph of Article 41 of the Staff Regulations of the Bank provides:

‘Disputes of any nature between the Bank and individual members of staff shall be brought before the Court of Justice of the European Communities.’

- 9 Article 44 of the Staff Regulations of the Bank provides:

‘The general principles common to the laws of the Member States of the Bank shall apply to individual contracts concluded under these Regulations in conformity with Article 13.’

- 10 Article 91(1) of the Staff Regulations of Officials of the European Communities provides:

‘The Court of Justice of the European Communities shall have jurisdiction in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.’

Facts of the case and procedure before the Court of First Instance

- 11 It appears from paragraphs 6 to 24 of the judgment under appeal that Mr Hautem, a messenger at the Bank, was, like Mr Yasse, who was also a messenger at the Bank, subjected to disciplinary proceedings for having engaged in a professional activity of a commercial nature without permission by forming the company Mon de l’Evasió SL (hereinafter ‘Mon de l’Evasió’), registered in the Principality of Andorra, and by carrying out commercial transactions on behalf of that company, for having involved the Bank in that activity, for having used the Bank’s equipment for that purpose and also for not having declared to the Bank his wife’s professional activity within that company. The Bank maintained that that conduct constituted breaches of Articles 1, 4 and 5 of the Staff Regulations of the Bank.
- 12 The complaints against Mr Hautem arose from a letter which the Bank received by fax on 28 October 1996 (‘the fax of 28 October 1996’). That letter bears the letterhead of Skit-Ball SARL, established in Marseilles (France), and is signed by Mr Ingargiola, who complained that the Cr dit Andorr  had refused to honour a cheque for FRF 46 500 issued to him by Mon de l’Evasió for the purchase of a

Skit-Ball stand. He alleged that Mr Hautem and Mr Yasse were involved in that commercial transaction and requested the Bank's Head of Personnel to take steps to ensue that the amount in question would be paid as quickly as possible.

- 13 By letter of 4 November 1996, the Bank sent Mr Hautem the fax of 28 October 1996 and the attached documents and requested him to provide a full explanation of the matter.
- 14 By letter of 6 November 1996, Mr Hautem replied that the allegations in the fax of 28 October 1996 were false and that, as regards the letter of 27 September 1996 accompanying the fax and apparently written by Mr Hautem ('the letter of 27 September 1996'), his wife had used his name and signature in an attempt to resolve the problems which she had encountered in her commercial relations with Skit-Ball SARL.
- 15 The Bank requested International Security Company BV (Interseco) (hereinafter 'Interseco') to investigate the matter. Interseco submitted its report on 28 November 1996.
- 16 By letter of 7 November 1996, the Bank informed Mr Hautem that, since his conduct might constitute a breach of Article 4 of the Staff Regulations of the Bank, it had decided to suspend him from his duties with immediate effect, in accordance with the first paragraph of Article 39 of the Staff Regulations of the Bank, for a maximum period of three months, during which time it would convene the Joint Committee provided for in Article 38 of the Staff Regulations of the Bank (hereinafter 'the Joint Committee'). The letter also stated that his salary would continue to be paid but that he was prohibited from entering the Bank's premises.

- 17 By letter of 19 November 1996 addressed to the Bank, Mr Ingargiola withdrew the accusations made against Mr Hautem and Mr Yasse in the fax of 28 October 1996. He stated in that letter that Mr Hautem and Mr Yasse had never used a document belonging to the Bank or its name and that they had not had any commercial relations with Skit-Ball SARL either on their own or on the Bank's behalf.
- 18 The President of the Bank referred the matter to the Joint Committee, as provided for in Article 40 of the Staff Regulations of the Bank, and at the same time, by letter of 19 December 1996, informed Mr Hautem of the facts of which he was accused and provided him with copies of the documents on which those accusations were based.
- 19 The letter stated that checks had been carried out within the Bank with Mr Hautem's and Mr Yasse's superiors and also with senior officials from the Bank's 'Information Technology' department. Those checks had, *inter alia*, revealed that the hard disk of the computer used by Mr Yasse contained four documents relating to extracurricular activities, namely:
- a fax instructing Cr dit Andorr  to transfer the sum of FRF 20 000 to the account of Skit-Ball SARL, bearing the letterhead 'World Escape — Mon de l'Evasi ' and stating 'Yasse Bernard — Administrator' under the heading 'Sender';
 - a fax having the same format, sender, date and signature as the one above, sent to an exhibition hall concerning the participation of Mon de l'Evasi  in a trade fair;

— a fax of 7 November 1996 concerning the sending of 12 books, headed ‘World Escape — Mon de l’Evasió’ and stating ‘Yasse Bernard — Mon de l’Evasió SL’ under the heading ‘Sender’; and

— a reference to Crèdit Andorrà recommending Mr Hautem and Mr Yasse as customers.

20 On 31 January 1997, the President of the Bank, acting on the basis of the reasoned opinion of the Joint Committee, took the decision to dismiss the applicant summarily, with a severance grant, for breach of Articles 1, 4 and 5 of the Staff Regulations of the Bank (hereinafter ‘the contested decision’).

21 It is apparent from the papers before the Court that a similar decision was taken on 31 January 1997 to dismiss Mr Yasse.

22 On 29 April 1997, Mr Hautem brought an action before the Court of First Instance for annulment of the contested decision and reinstatement in his duties; he relied, *inter alia*, on a manifest error in assessing the facts. In his application, he also requested the Court of First Instance to order the Bank to pay him certain sums, either, should he be reinstated, by way of arrears of remuneration or, should he not be reinstated, by way of various heads of damage which he claimed to have sustained.

- 23 Mr Yasse brought an action before the Court of First Instance on the same date for annulment of the Bank's decision to dismiss him and for damages. By judgment of 28 September 1999 in Case T-141/97 *Yasse v EIB* [1999] ECR-SC I-A-177 and II-929, the Court of First Instance dismissed that action.

The judgment under appeal

- 24 The Court of First Instance first dealt with the plea alleging a manifest error in assessing the facts. In that regard, it held as follows:

'68 As regards [the applicant's] capacity as a founder member of *Mon de l'Evasió*, holding 16% of the shares, it does not constitute proof that he was engaged in a commercial activity. As the Bank acknowledged at the hearing, being a founder member is not the same as being an administrator and it is thus necessary to ascertain whether the applicant did in fact participate in the company's activities.

69 As regards the reference to his connection with the Bank, it should be pointed out that, contrary to what is stated in the contested decision and argued by the defendant in its pleadings, it has not been established that the applicant appropriated documents belonging to the Bank or took advantage of his connection with the Bank in a manner contrary to the Staff Regulations of the Bank. Admittedly, in his letter sent by fax on 28 October 1996, Mr Ingargiola describes the applicant as the "person in charge of the computer section" of the Bank. However, Mr Ingargiola himself acknowledged in his statement to Interseco that on the only occasion on which they met the applicant had told him that he was "employed as a messenger at the Bank". Mr Ingargiola also stated: "Mr Yasse made himself out to be someone important in the finance department, whereas I made an assumption about Mr Hautem's post. That is, his wife had said that her husband 'did something with computers'."

- 70 As regards the use of the Bank's equipment for commercial purposes, the applicant merely collaborated with Mr Yasse in drafting the four documents found on Mr Yasse's computer. Contrary to what the Bank contends, that participation in such a use by Mr Yasse of his office computer cannot be characterised as systematic use for commercial purposes. Likewise, the mere fact that the applicant participated in creating those documents, even though it may be regarded as assisting in the exercise of a commercial activity, cannot be classified as engaging in a professional activity of a commercial nature within the meaning of Article 4 of the Staff Regulations of the Bank. Last, and contrary to what is stated in the contested decision, the applicant's conduct could not have given the impression that the Bank was involved in his activities. The documents in question were not sent to their recipients by the applicant and none of them bears his signature.
- 71 As regards the inferences to be drawn from Mr Ingargiola's letter sent by fax on 28 October 1996, it should be observed that the applicant himself did indeed acknowledge that he had participated in the commercial transaction complained of by Mr Ingargiola: however, Mr Ingargiola informed Interseco that Mr Yasse and Mrs Hautem had presented themselves "as [the] owners of Mon de l'Evasió", that they had a promotion project for a Skit-Ball stand and that they had bought one. He stated that he had only met the applicant once and that on that occasion the applicant had said that "his wife dealt with matters in Mon de l'Evasió with Mr Yasse". Mr Ingargiola also said that he had the impression that the applicant "had nothing to do with Mon de l'Evasió". Consequently, the letter from Mr Ingargiola faxed on 28 October 1996 cannot constitute sufficient proof that the applicant had engaged in a professional activity of a commercial nature.
- 72 As regards Mr Ingargiola's letter of 19 November 1996 withdrawing his complaint, it should be pointed out that, as far as the applicant is concerned, its content is confirmed by, and consistent with, the above-mentioned statements of Mr Ingargiola. Nor has the Bank adduced any evidence to the contrary.

- 73 As regards the letter of 27 September 1996 attributed to the applicant,... even supposing that it was written and signed by Mrs Hautem, [it] does indeed confirm that the applicant participated in [the] commercial transaction [relating to the Skit-Ball stand]. However, it is not of such a kind as to establish that the applicant engaged in a professional activity of a commercial nature.
- 74 It should further be pointed out that neither the documents attached to Mr Ingargiola's letter sent by fax on 28 October 1996, namely the letter of 6 September 1996 from Mr Yasse and cheque No 6 555 542, signed by Mr Yasse, nor the documents annexed by the Bank to its rejoinder, namely the faxes of 24 September and 2 October 1996, both signed by Mr Yasse, in any way establish that the applicant was engaged in commercial activities.
- 75 It follows from all the foregoing that the evidence adduced by the Bank, considered as a whole, shows that the applicant, as he himself has acknowledged, occasionally assisted both his wife and Mr Yasse in the exercise of a commercial activity and that he participated in a commercial transaction — namely, the purchase of a Skit-Ball stand by Mon de l'Evasió. Owing to its occasional nature and its limited scope, however, that collaboration on the applicant's part cannot be classified as engagement in a professional activity of a commercial nature within the meaning of Article 4 of the Staff Regulations of the Bank. Likewise, it has not been proved that the applicant relied on his connection with the Bank, that he involved the Bank or that he personally used the Bank's equipment.
- 76 It follows that the Bank made a manifest error in assessing the facts. Accordingly, the application must be upheld and the contested decision annulled, without there being any need to consider the complaint relating to the applicant's failure to declare his wife's activity within Mon de l'Evasió or the other pleas put forward in support of the present action for annulment.

77 Since, pursuant to Article 41 of the Staff Regulations of the Bank, the Court has jurisdiction in disputes of any nature between the Bank and individual members of staff, it is necessary to apply, by analogy, the rule laid down in Article 91(1) of the Staff Regulations of Officials of the European Communities that the Court has unlimited jurisdiction in disputes of a financial character. The Bank must therefore be ordered to pay the applicant the arrears of remuneration which he should have received since his dismissal.'

25 Second, the Court of First Instance dismissed the claims for compensation submitted by Mr Hautem and declared the Bank's claim for compensation inadmissible.

26 In paragraphs 1 and 2 of the operative part of the judgment under appeal, the Court of First Instance:

'1. Annull[ed] the decision of the European Investment Bank of 31 January 1997, whereby the applicant was dismissed without loss of severance grant;

2. Order[ed] the European Investment Bank to pay the applicant the arrears of remuneration which he should have received since his dismissal.'

The appeal

27 In its appeal, the Bank claims that the Court should:

- set aside paragraphs 1 and 2 of the operative part of the judgment under appeal, and
- order Mr Hautem to bear his own costs.

28 Mr Hautem contends that the Court should:

- primarily, declare the appeal inadmissible or, in the alternative, declare it unfounded,
- uphold paragraphs 1 and 2 of the operative part of the judgment under appeal, and
- order the Bank to pay the costs of both sets of proceedings.

29 The Bank puts forward two pleas in law in support of its appeal. The first plea alleges misclassification of the legal nature of the facts, leading to consequences

that are incorrect in law, and an error in the statement of reasons. The second plea alleges disregard of the contractual rules applicable to relations between the Bank and its staff.

First plea in law

30 The Bank maintains that, in the judgment under appeal, the Court of First Instance misclassified the facts and made an error in the statement of reasons, in that:

- it incorrectly held that the acts carried out by Mr Hautem could not be regarded as a form of professional activity of a commercial nature within the meaning of Article 4 of the Staff Regulations of the Bank (first branch);
- it incorrectly held that Mr Hautem had not involved the Bank in the exercise of that activity and that he had not therefore infringed the obligation to conduct himself as required by Article 1 of the Staff Regulations of the Bank (second branch);
- it incorrectly held that Mr Hautem had not made improper use of the Bank's equipment and that he had not therefore infringed the obligation to conduct himself as required by Article 1 of the Staff Regulations of the Bank (third branch);

- it incorrectly refused to attach importance to Mr Hautem's conduct and thus rejected the complaints against him by the Bank (fourth branch), and
- it incorrectly refused to attach importance to Mr Hautem's failure to declare the commercial activity carried out by his wife in the Principality of Andorra, contrary to Article 5 of the Staff Regulations of the Bank (fifth branch).

31 Mr Hautem claims that the first plea is wholly inadmissible. By its complaint relating to the allegedly mistaken legal characterisation by the Court of First Instance, the Bank is in reality requesting the Court to reconsider the facts, whereas, pursuant to Article 225 EC and Article 51 of the EC Statute of the Court of Justice, an appeal is limited to points of law only and the arguments put forward by the Bank before the Court of Justice constitute a mere repetition of those already put forward before the Court of First Instance. The complaint alleging an error in the statement of reasons is inadmissible as well, since the Court of First Instance took all the evidence adduced into consideration and stated the reasons on which the outcome of its assessment was based.

First branch

Arguments of the parties

32 The Bank submits that, as Mon de l'Evasió was formed in the Principality of Andorra in April 1996, it may be assumed that the documents examined by the Court of First Instance dealt essentially with the commercial acts which had been performed by that company and by its associates when the fax of 28 October

1996 was received. The preparation and implementation of those acts necessarily implied that both Mr Hautem and Mr Yasse had engaged in a professional activity of a commercial nature. However, the Court of First Instance held that only Mr Yasse had engaged in such an activity and that Mr Hautem had not.

33 Although the Court of First Instance made a correct finding of fact when it held, in the first and second sentences of paragraph 70 of the judgment under appeal, that Mr Hautem had participated in drawing up the documents found on Mr Yasse's computer, it misclassified their legal nature when it refused to consider that Mr Hautem had played an active role as an interested party and that they constituted commercial acts on Mr Hautem's part, although it made a finding to that effect in respect of the same documents in paragraphs 65 and 77 of the judgment in *Yasse v EIB*. In reality, Mr Hautem's participation in the creation of those documents may be explained by his personal interest in having a line of credit opened with Crédit Andorrà in the name of the two associates, as may be seen from the fax of the letter dated 19 August 1996 to Crédit Andorrà recommending Mr Hautem and Mr Yasse as customers and the application to open a line of credit sent to Crédit Andorrà by fax of 24 September 1996, the text of which is set out in paragraph 74 of the judgment in *Yasse v EIB*.

34 The grounds of the judgment on this point must be regarded as insufficient and contradictory, since the Court of First Instance did not take account of the fact that, like Mr Yasse (see *Yasse v EIB*, paragraph 66), Mr Hautem made various false statements concerning certain documents for the sole purpose of concealing his actual participation in the company's activities.

35 The statement by the Court of First Instance in the final sentence of paragraph 70 of the judgment under appeal that '[t]he documents in question were not sent to the recipients by the applicant and his signature is not on any of them' reveals a failure to state reasons and an error of characterisation.

- 36 As regards the statement of reasons, the fact that Mr Hautem did not sign the documents does not mean that he did not actively participate in the decision to send them and to make use of them.
- 37 As regards the characterisation of the legal nature of the facts found, in holding that Mr Hautem had no intention of participating in sending and using the documents, the Court of First Instance incorrectly concluded that in Mr Hautem's case those facts could not be regarded as actual participation in carrying out acts of a patently commercial nature. That amounts to an unacceptable limitation of the definition of a commercial act.
- 38 Furthermore, as regards the findings concerning Mr Ingargiola's statement to Interseco set out in paragraph 71 of the judgment under appeal, the Bank emphasises first of all that that statement is clearly inconsistent with the fax of 28 October 1996. There is also an inconsistency between that statement and the letter of 27 September 1996, which was drafted in such a way as to give the impression that it was from Mr Hautem in his capacity as 'Director, management and marketing' of Mon de l'Evasió.
- 39 The Bank goes on to state that, in paragraph 72 of the judgment under appeal, the Court of First Instance attached significant value to Mr Ingargiola's letter of 19 November 1996 withdrawing his complaint, whereas, in paragraph 70 of *Yasse v EIB*, it stated that it did not believe that that withdrawal of the complaint was spontaneous.
- 40 Last, the reasoning in paragraph 73 of the judgment under appeal concerning the letter of 27 September 1996 must be regarded as inadequate and contradictory. The Court of First Instance should have taken account of the fact that the letter could only have come from Mr Hautem and should have read it in the context of the facts which had been attributed to him.

41 Mr Hautem contends that this first branch of the first plea in law is inadmissible because it calls for an analysis of the facts by the Court of Justice and because it is not based on legal argument; the Bank provides no definition of what it means by 'commercial act'.

42 The Bank's complaint concerning a failure to state the reasons on which the judgment under appeal is based, in that the Court of First Instance did not explain how the collaboration which Mr Hautem provided to his wife and Mr Yasse was exclusively occasional and limited, is inadmissible as well, because the Court of First Instance took account of all the evidence adduced, the probative force of which it alone has jurisdiction to evaluate, and provided adequate reasons for its position in that regard.

43 As regards the substance, Mr Hautem contends that none of the acts of which the Bank accuses him in its appeal is a commercial act.

Findings of the Court

Admissibility

44 Under Article 225 EC and Article 51 of the EC Statute of the Court of Justice, an appeal lies on a point of law only. Therefore, 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 arises from evidence adduced before it. The appraisal of the facts by the Court of First Instance 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 (Joined Cases C-280/99 P to C-282/99 P *Moccia Irme and Others v Commission* [2001] ECR I-4717, paragraph 78).

45 However, the Court of Justice has jurisdiction under Article 225 EC to review the legal characterisation of those facts by the Court of First Instance and the legal conclusions it has drawn from them (see Case C-7/95 P *Deere v Commission* [1998] ECR I-3111, paragraph 21). Furthermore, the question whether the grounds of a judgment of the Court of First Instance are contradictory or inadequate is a question of law which is amenable, as such, to judicial review on appeal (Case C-401/96 P *Somaco v Commission* [1998] ECR I-2587, paragraph 53).

46 In the present case, the first branch of the first plea in the appeal alleges incorrect legal characterisation of the facts and an error on the part of the Court of First Instance in the grounds of the judgment. However, this branch of the plea relies largely on arguments which seek to criticise not the legal assessment but rather the factual assessment which the Court of First Instance made in the light of the evidence adduced before it, which is not amenable to review by the Court of Justice. Those arguments must therefore be declared inadmissible.

47 That applies, first, to the arguments whereby the Bank criticises the Court of First Instance, on the one hand, for having refused, in paragraph 70 of the judgment under appeal, to consider that Mr Hautem had played an active role as an interested party in drawing up the documents found on Mr Yasse's computer and, on the other hand, for having held that Mr Hautem had no intention of participating in sending and making use of those documents. Those arguments seek to challenge the Court of First Instance's finding of fact that Mr Hautem merely collaborated with Mr Yasse in drawing up the four documents found on the latter's computer, and neither signed them nor sent them.

48 It also applies to the arguments whereby the Bank criticises the Court of First Instance for having, in paragraph 71 of the judgment under appeal, incorrectly assessed the statement which Mr Ingargiola made to Interseco, having regard to the fax of 28 October 1996. Those arguments seek to criticise the Court of First Instance's finding of fact that that fax did not constitute sufficient proof that Mr Hautem had engaged in a professional activity of a commercial nature.

49 The same applies, last, to the argument whereby the Bank criticises the Court of First Instance for not taking into consideration, in paragraph 73 of the judgment under appeal, the fact that the letter of 27 September 1996 could only have come from Mr Hautem. Determining who wrote a letter and the need to identify that person in the light of the matters to be established are both issues of fact, which the Court of First Instance has sole jurisdiction to assess.

Substance

50 As regards the legal characterisation of Mr Hautem's participation in drawing up the documents found on Mr Yasse's computer, it should be pointed out that, in paragraph 70 of the judgment under appeal, the Court of First Instance held that such participation, even though it could be regarded as helping in the exercise of a commercial activity, could not be characterised as engaging in a professional activity of a commercial nature within the meaning of Article 4 of the Staff Regulations of the Bank.

51 That characterisation by the Court of First Instance is not vitiated by any error of law, since, according to the definitive findings of fact made by the Court of First Instance, Mr Hautem merely collaborated in drawing up the documents found on Mr Yasse's computer and neither sent them nor signed them.

- 52 Nor, in the light of what is said in the preceding paragraph, does paragraph 70 of the judgment under appeal contain an error of reasoning in respect of the fact that the Court of First Instance did not consider it necessary to rule on the truth of Mr Hautem's statements concerning certain of those documents.
- 53 Likewise, the reasoning in the final sentence of paragraph 70 of the judgment under appeal is not vitiated by error. Contrary to what the Bank maintains, the Court of First Instance did not base its finding that Mr Hautem did not send the documents in question on the fact that he did not sign them. It referred to the absence of a signature as further evidence in support of the conclusion which it reached on the basis of the evidence adduced before it, namely that Mr Hautem only contributed to the creation of those documents.
- 54 As regards the error which, according to the Bank, vitiates the reasons set out in paragraph 72 of the judgment under appeal and which results from a contradiction between the value attached to Mr Ingargiola's letter of 19 November 1996 withdrawing the complaint and that attributed to the same letter in paragraph 70 of the judgment in *Yasse v EIB*, where the Court of First Instance implies that it does not believe that that withdrawal was spontaneous as regards the acts of which Mr Yasse was accused, paragraph 72 of the judgment under appeal must be placed in its context.
- 55 Thus, in paragraph 71 of the judgment under appeal, the Court of First Instance concluded that the fax of 28 October 1996 could not constitute sufficient proof that Mr Hautem had engaged in a professional activity of a commercial nature, relying on Mr Ingargiola's statement to Interseco, which specifically emphasised the different degrees to which Mr Hautem and Mr Yasse were involved in the commercial relations with Skit-Ball SARL.

56 It was in that context, therefore, that the Court of First Instance held in paragraph 72 of the judgment under appeal that, in Mr Hautem's case, the content of Mr Ingargiola's letter of 19 November 1996 withdrawing his complaint was confirmed by Mr Ingargiola's statement to Interseco.

57 It follows that, contrary to the Bank's contention, the reasoning set out in paragraph 72 of the judgment under appeal is not vitiated by an error.

58 The first branch of the first plea in law must therefore be rejected.

Second branch

Arguments of the parties

59 The Bank maintains that the statement in paragraph 69 of the judgment under appeal that it was not established that Mr Hautem took advantage of his connection with the Bank in a manner contrary to the Staff Regulations of the Bank is incorrect. The Court of First Instance did not take into consideration the

fact that by participating in the decision to send to Crédit Andorrà the faxes found on Mr Yasse's computer, and in particular the fax concerning the request for a line of credit concerning him, Mr Hautem did indeed help to involve the Bank in an activity of a commercial nature. Furthermore, in paragraph 76 of *Yasse v EIB* the Court of First Instance mentioned the fact that that fax had been sent from the Bank on paper bearing its letterhead.

- 60 Mr Hautem replies that the Court of First Instance concluded on the basis of the evidence adduced by the Bank that there was insufficient proof of the alleged facts. The Court of Justice cannot review the legal characterisation of non-existent facts or of facts which have not been established. The Bank's reference to *Yasse v EIB* is irrelevant.

Findings of the Court

- 61 It should be pointed out in that regard that the second branch of the first plea in the appeal rests on a factual premiss, namely that Mr Hautem participated in the decision to send the faxes found on Mr Yasse's computer to Crédit Andorrà, which runs counter to the definitive finding of the Court of First Instance in paragraph 70 of the judgment under appeal. The Court of First Instance held that Mr Hautem merely cooperated in drafting the four documents found on Mr Yasse's computer and did not participate in sending them.
- 62 As that finding cannot be challenged on appeal, the second branch of the first plea must be declared inadmissible.

Third branch

Arguments of the parties

- 63 The Bank claims that the Court of First Instance wrongly held, in paragraph 70 of the judgment under appeal, that Mr Hautem had not improperly misused the Bank's equipment. In the context of this branch of the plea, it reiterates its argument that Mr Hautem had a specific interest in participating not only in the drafting of two of the documents found on Mr Yasse's computer but also in sending them, which explains why he actively participated in using the Bank's equipment for purposes not approved by the Bank, contrary to Article 1 of the Staff Regulations of the Bank.
- 64 Mr Hautem contends that the Bank is merely attempting to prove that he had an interest in the implementation of an allegedly reprehensible act but is unable to establish proof that such an act was implemented. The Bank's argument is, moreover, irrelevant, since the Court of Justice has no jurisdiction to evaluate the evidence.

Findings of the Court

- 65 It is sufficient in that regard to state that the third branch of the first plea rests on a factual premiss, namely that Mr Hautem participated in sending two of the documents found on Mr Yasse's computer, which, as pointed out in paragraph 61 above, runs counter to the definitive finding of the Court of First Instance in paragraph 70 of the judgment under appeal.
- 66 The third branch of the first plea must therefore be declared inadmissible.

Fourth branch

Arguments of the parties

- ⁶⁷ The Bank claims that, by refusing to recognise that Mr Hautem engaged in conduct designed to conceal his participation in the activity of *Mon de l'Evasió* and thus rejecting by implication the complaint which the Bank formulated in that regard on the basis of Article 1 of the Staff Regulations of the Bank, the Court of First Instance wrongly characterised, from the aspect of that provision, the legal nature of Mr Hautem's conduct and failed to take account of the 'serious grounds' which justified his dismissal.
- ⁶⁸ The Bank refers, in particular, to the allegedly ambiguous conduct adopted by Mr Hautem during the disciplinary proceedings and the proceedings before the Court of First Instance, when he endorsed the false statements made by Mr Yasse.
- ⁶⁹ Mr Hautem contends that the Bank never referred, before the Court of First Instance, to the existence of 'serious grounds' which justified his dismissal and that it cannot therefore criticise the Court of First Instance for having completely disregarded them in the judgment under appeal. The Bank is therefore submitting a fresh plea, which the Court of Justice cannot take into consideration.

- 70 Furthermore, to hold that Mr Hautem's conduct during the dismissal proceedings constitutes a ground justifying the decision to dismiss him would amount to prohibiting a member of staff threatened with such a measure from taking action, lest his position be made worse, and to considering matters extraneous to the facts which gave rise to the disciplinary proceedings. The Bank is aware of the reasons which forced Mr Hautem, who initially had the same legal representatives as Mr Yasse, to distance himself from the latter when it emerged, at the end of the written procedure before the Court of First Instance, that Mr Yasse had been guilty of forging documents in order to reduce his responsibility for the facts of which he was accused.

Findings of the Court

- 71 It is sufficient in that regard to observe that the Court of First Instance held, in paragraph 75 of the judgment under appeal, that the evidence adduced by the Bank was incapable of establishing either that Mr Hautem had engaged in a professional activity of a commercial nature or that he had taken advantage of his connection with the Bank, involved the Bank or personally used the Bank's equipment. Since, according to the contested decision, those complaints formed the basis for dismissing Mr Hautem, the Court of First Instance correctly concluded that it was no longer necessary to ascertain whether his dismissal might have been justified by his conduct during the disciplinary proceedings and, *a fortiori*, during the proceedings before the Court of First Instance.
- 72 The fourth branch of the first plea in law must therefore be rejected.

Fifth branch

Arguments of the parties

- 73 As regards the alleged breach by Mr Hautem of Article 5 of the Staff Regulations of the Bank, which requires that members of staff declare their spouse's profession, the Bank maintains that paragraph 76 of the judgment under appeal contains inadequate reasoning and a wrong characterisation in law. However, it leaves it to the discretion of the Court to assess, in the context of the serious facts of which Mr Hautem is accused, the significance of that breach.
- 74 Mr Hautem contends that this plea is inadmissible, since the Bank is requesting the Court to rule on facts which the Court of First Instance did not assess.

Findings of the Court

- 75 The fifth branch of the first plea is directed against a finding of law in paragraph 76 of the judgment under appeal and must therefore be declared admissible.

- 76 As regards the substance of this branch of the plea, the Court of First Instance held, in paragraph 76 of the judgment under appeal, that there was no need to consider the complaint relating to Mr Hautem's failure to declare his wife's activity within Mon de l'Evasió since, as the Bank had made a manifest error in assessing the facts, the contested decision must be annulled in any event.
- 77 Such reasoning appears to be legally flawed, because the contested decision might still, in the appropriate circumstances, have been justified by the breach of Article 5 of the Staff Regulations of the Bank. In fact, the Court of First Instance failed to assess the possible significance of Mr Hautem's failure to declare his wife's activity for the lawfulness of the contested decision.
- 78 However, that error on the part of the Court of First Instance is of no consequence. Clearly, the failure to declare his wife's activity, contrary to Article 5 of the Staff Regulations of the Bank, even supposing it to be established, cannot justify a penalty as serious as dismissal, having regard in particular to the nature of Mr Hautem's duties within the Bank.
- 79 The fifth branch of the first plea in law must therefore be rejected.
- 80 Having regard to the foregoing considerations, the first plea in law must be rejected in its entirety.

Second plea in law

Arguments of the parties

- 81 The Bank submits that, in paragraph 77 of the judgment under appeal, the Court of First Instance failed to take account of the contractual rules applicable to employment relations between the Bank and the members of its staff when it held that, applying Article 91(1) of the Staff Regulations of Officials of the European Communities by analogy, it had unlimited jurisdiction and could therefore order the Bank to pay Mr Hautem his arrears of remuneration. Referring to Articles 13 and 44 of the Staff Regulations of the Bank and to Case 110/75 *Mills v European Investment Bank* [1976] ECR 955, paragraphs 22 and 25, the Bank claims that the main sources of the rules applicable to those employment relations are the Staff Regulations of the Bank and the contract between the Bank and each member of its staff. It is therefore necessary to draw a substantial distinction between the system applicable to employees of the Bank, which is contractual, and that applicable to officials of the European Communities, which is governed by the Staff Regulations.
- 82 The Bank therefore argues that where a member of its staff is dismissed, a rule set out in the Community Staff Regulations cannot be applied ‘by analogy’.
- 83 The Bank maintains, more particularly, that by ordering it to pay Mr Hautem the arrears of the remuneration which he should have received since the date of his dismissal, the Court of First Instance followed the logic of the Staff Regulations of Officials of the European Communities which, according to *Mills v European Investment Bank*, cannot be applied in the present case. Even where a dismissal decision taken by the Bank is annulled, neither reconstitution of career nor reinstatement is available to the dismissed employee, as those concepts are

entirely alien to the legal nature of a contractual system. In that case, only compensation is available (see *Mills v European Investment Bank*, paragraph 24).

84 Furthermore, having regard to the fact that it did not rule on Mr Hautem's reinstatement, the Court of First Instance contradicted itself, since, on the one hand, it relied on the logic of the Staff Regulations of Officials of the European Communities to order the payment of arrears of remuneration and, on the other hand, it did not order reinstatement, which is solely within the power of the Bank under the rules of law applicable to it.

85 The Bank goes on to say that, in reality, the Court of First Instance decided of its own motion in paragraph 77 of the judgment under appeal to make good the alleged harm sustained by Mr Hautem, although at first instance he had claimed damages only in the event that the decision dismissing him should not be annulled.

86 Mr Hautem contends that the second plea was neither mentioned nor argued in the proceedings before the Court of First Instance and that it therefore constitutes a fresh plea, which must be rejected as inadmissible.

Findings of the Court

Admissibility

87 Under Article 42(2) of the Rules of Procedure of the Court of Justice, which pursuant to Article 118 of those Rules applies to the procedure on appeal, no new

plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

88 In the present case, the Bank clearly could not have been aware during the proceedings before the Court of First Instance of the reasoning set out in paragraph 77 of the judgment under appeal.

89 It follows that the second plea is based on a matter of law which came to light in the course of the procedure within the meaning of Article 42(2) of the Rules of Procedure of the Court of Justice and that, accordingly, it must be declared admissible.

Substance

90 As regards, first, the question as to whether the Court of First Instance erred in law in applying Article 91(1) of the Staff Regulations of Officials of the European Communities by analogy in a dispute between the Bank and one of its employees in order to provide a basis for its unlimited jurisdiction, it is necessary to take Article 41 of the Staff Regulations of the Bank into consideration.

91 Article 41 provides that ‘[d]isputes of any nature between the Bank and individual members of staff shall be brought before the Court of Justice of the European Communities’.

- 92 It follows that Article 41 of the Staff Regulations of the Bank does not remove disputes of a financial character between the Bank and its staff from the jurisdiction of the Court of Justice, and therefore from that of the Court of First Instance, and that it does not limit the exercise of that jurisdiction according to the particular nature of a dispute.
- 93 Admittedly, in exercising that jurisdiction, the Court of First Instance and the Court of Justice may not disregard the special characteristics of the system applicable to the staff of the Bank, which, as the Court of Justice observed in paragraph 22 of *Mills v European Investment Bank*, is contractual.
- 94 However, the particular nature of the system applicable to the staff of the Bank does not mean that the Court of First Instance and the Court of Justice cannot be recognised as having unlimited jurisdiction in disputes of a financial character between the Bank and its staff. On the contrary, it corroborates such recognition. In the absence of an express limitation laid down in the applicable rules, the court having jurisdiction over the contract generally has unlimited jurisdiction to adjudicate on disputes relating to the contract.
- 95 Consequently, the Court of First Instance correctly held that, by applying by analogy Article 91(1) of the Staff Regulations of Officials of the European Communities, it had unlimited jurisdiction to adjudicate on the financial aspects of the dispute between Mr Hautem and the Bank.
- 96 As regards, next, the question as to whether the Court of First Instance failed to take account of the contractual nature of the system applicable to the staff of the Bank when it ordered the Bank to pay Mr Hautem the arrears of the remuneration which he should have received since the date of his dismissal, it

is clear that that decision of the Court of First Instance, contrary to the Bank's assertion, is not patterned on the logic of the Staff Regulations of Officials of the European Communities, since an award of arrears of remuneration is the normal consequence of a finding that a dismissal decision is unlawful, including where the applicable system is one governed by contract.

97 Finally, it is clear from paragraph 35 of the judgment under appeal that Mr Hautem had requested the Court of First Instance to order the Bank to pay him the arrears of his remuneration.

98 The second plea must therefore be rejected.

99 Having regard to the foregoing considerations, the appeal must be dismissed in its entirety.

Costs

100 Under Article 69(2) of the Rules of Procedure, which is applicable to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since Mr Hautem applied for costs and the Bank has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the appeal;
2. Orders the European Investment Bank to pay the costs.

Gulmann

Skouris

Puissochet

Schintgen

Colneric

Delivered in open court in Luxembourg on 2 October 2001.

R. Grass

C. Gulmann

Registrar

President of the Sixth Chamber